(1)

Supreme Court, U.S.
FILED

06-264 JUN 16 2006

OFFICE OF THE CLERK

No.____________

In The
Supreme Court of the United States

Lisha Fan, M.D.,

Petitioner

Versus

Subir Nag, M.D., et al.,

Respondents

On Petition For A Writ of Certiorari To The United States Court of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

Lisha Fan, M. D.,
17 Jackson Street
Newton, MA 02459
617-964-0047

QUESTIONS PRESENTED FOR REVIEW

1. Is Judge James L. Graham impartialness questionable? [Judge Graham received a College's Distinguished Jurist Award from Ohio State University (defendant) in March 2004. One month later, on April 30, 2004, he ordered a dismissal of petitioner's claims of radiation exposure injury, direct and indirect, without a trial and evidence hearing]

2. Does Radiation Exposure Injury meet the constitutional rights to a jury trial? Or at least an evidence hearing?

3. Dose the appellate have constitutional right to present evidences related to her claims?

PARTIES TO THE PROCEEDINGS

The following individuals and entities are parties in the Court below

1. **Petitioner** Lisha Fan, M.D., 17 Jackson St.
Newton, MA 02459

2. **Respondents**

(a). Subir Nag, M. D., James Cancer Hospital 300 West
Avenue, Columbus, OH 43212

(b). Reinhard Gahbauer, M.D., Address is same as 2(a).

(c). Nina Samsami, PhD., Address is same as 2(a).

(d). Connie Bauer M.D., Address is same as 2(a).

(e). Andrew Thomas, M.D., Assistant Dean Graduate
Medical Education
125 Doan Hall, 410 West 10th Avenue
Columbus, OH 43210-1228

(f). Steven Marsh, Medical Health Physicist, Radiation
Safety Office of Environmental Health and Safety
1314 Kinnear Road, Columbus, OH 43212

(g). The Ohio State University Medical Center
130 Doan Hall, 410 West 10th Avenue
Columbus, OH 43210

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United States District Court for the Southern District Eastern Division of Ohio, Civil Action, Case No. 03-cv-966 Appendix (7-53)

Statement of the Basis for Jurisdiction

A. The United States District Court for the Southern District, Eastern Division of Ohio exercised subject matter jurisdiction over Petitioner's Claims pursuant to federal question, 28 U.S.C.§ 1331 and Diversity of citizenship; amount in controversy; costs 28 U.S.C.§ 1332 (a)(1).

B. The Sixth Circuit Court of Appeal exercised Jurisdiction over Petitioner's appeal from a final decision of U. S. District Court pursuant to 28.U.S.C.§1295, §1291. §2072.

C. Fan's appeal was timely filed pursuant to Rule 4(a)(1)(A) of the Federal Rules of Appeal Procedure on November 22, 2004 (with Express mail, and delivered at 10:48am at Nov. 23, 2004, signed by R Ford), within thirty(30) days after the District Court's Judgment was entered on October 25, 2004.

D. The United States Court of Appeals for the Sixth Circuit rendered its decision on the March 21, 2006.

E. A Petition for Certiorari to this Court has been filed within ninety days of the Court of the Appeals for the Sixth Circuit pursuant to Supreme Court Rule 10(a)(c), 13(1).

Constitutional and Statutory Provisions Involved

Amendments to the Constitution [Article VII.] (1789),

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

2 U.S.C. §1317 Prohibition of intimidation or Reprisal

"(a) In general.- It shall be unlawful for an employing office to intimidate, take reprisal against, or otherwise discriminate against, any covered employee because the covered employee has opposed any practice made unlawful by this chapter, or because the covered employee has initiated proceedings, made a charge, or testified, assisted, or participated in any manner in a hearing or other proceeding under this chapter."

29 U.S.C. Family & Medical Leave Act

§ 2601(b)(2)"to entitle employee to take reasonable leave for medical reasons..."

§ 2611(2)(A)(i) "The term 'eligible employee' means an employee who has been employed for at least 12 months by the employer with respect to whom leave is required under section 2612 and this title;"§ 2612 (a)(1) "Subject to section 2613 of this title, an eligible employee shall be entitled to a total of 12 work weeks of leave during any 12-month period for one or more of the following: (D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee."

§ 2613 (b)(3) "the appropriate medical facts within the knowledge of the health care provider regarding the condition;"

29 U. S. C. §158(a)(4) Unfair Labor Practices

"to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this subchapter;"

29 U. S. C. § 660(c)(1) Occupational safety & Health Act

"No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf or others of any right afforded by this chapter."

42 U. S. C. § 1981a Damages in Cases of Intentional Discrimination in Employment

(a)Right to recovery

(b)Compensatory and punitive damages-

(c)Jury trial.-If a complaining party seeks compensatory or punitive damages under this section- any party may demand a trial by jury

42 U. S. C. § 2000e-3(a) "Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings."

Statement of the Case

(Since I am the petitioner/plaintiff, I will use "I" instead of "petitioner" in this FACTS section)

I, Lisha Fan, is a female Asian, and has resided and possessed the property at 17 Jackson street. Newton, Massachusetts since 1993, (except for one year lived in Brooklyn, New York, and three and half years in Columbus, Ohio for medical residency training). I was a Radiation Oncology resident from July 1, 1999 to December 17, 2002, at James Cancer Hospital at Ohio States University. I took Radiation Oncology Board Exam in Sept. 2002 (App-E2) and have been evaluated as an excellent resident throughout my residency.(App-E1), However, I was suspended on October 8, 2002 and wrongfully terminated on Dec.17, 2002, for the events that surrounded alleged Radiation Exposure Injury occurred on May 15, 2002.

On April 12, 2002, Dr. Subir Nag with other staff, and I, were finishing a complex case in the operation room. When we transported the patient to the floor, Dr. Nag said "Dr. Fan has no license of the transportation of the patient", as we transported the patient to the floor. I paid no attention to the comment, and helped to load the radioactivity source later that evening. Upon completion of the procedure I asked Dr. Nag for permission to leave. He said "Ok" and left for my week long vacation in Boston which he previously granted. When I returned to work, I was told "that patient we did an implant on, who pulled out her implant during the weekend".

On April 30, 2002, after resident dosimetry class, Dr. Yacob a 2nd year resident said "today is the last paycheck". I knew something that is going on about me, but didn't know what or why. Next day, May 1, 2002, while changing the film and ring badge, Megan, the therapist who dispensed the badge, failed to give me my ring badge, I asked her why, to which she replied "I don't know, you have to ask Steve [the supervisor of the therapists]". I did and received my ring badge. On that same day, I had a meeting with Carol Hasbrouck regarding several concerns, such as people getting my password, doing things on my computer, and changing schedules so I would miss the mandatory education events.

On May 6, 2002, I had I-123 sodium iodide test. I was found to have a "cold" nodule in the right lobe of my thyroid gland. I was recommended by Dr. Pozderac that I should have lead protection during the brachytherapy procedures. I asked Tim Nelson for a lead neck collar, but never got it.

On May 14, 2002, we did an interstitial implant, but was told by Dr. Samsami radioactivity source (usually loaded on the same day) "need decay one more day".

On May 15, 2002, we had two prostate implants scheduled at 7:00am and 9:30am, with interstitial implant from May 14, scheduled between the two. After the first prostate implant case, I went to the clinic to take care of some patients, but was told to load for the interstitial case. I was thinking of the next best way to be protected against radiation exposure since my attending would not allow me to use lead shielding.(I had asked a few times about lead shielding prior to this case but had been laughed at) I thus tried to keep a distance and be exposed in less time, but forgot my ring badge due to the hurry.[from 9:30-10:00am]I finished loading 18 catheters. Both Dr. Nag and I were satisfied with the procedure; and he told me to start on the second prostate implant, for which he would complete the interstitial case paper work. However During the 3rd case, about 45 minutes after the interstitial loading case, I started having a warm sensation in my arms and upper torso. But I completed the 3rd case despite the discomfort, started feeling dizzy and nauseated with dry mouth and lack of appetite around noontime. I went on to consult a new patient, and finish dictation, and put a diagnosis in the lantins. I left at 2:45pm to meet Carol Hasbrouck, which ended at 4:00pm. I went home directly, and didn't participate the resident's meeting at 5:00pm, due to my illness. I went to bed immediately but the warm sensation from before was still there and getting worse. I had nausea, no appetite, fever, chills, vomiting, coughing sore throat and diarrhea. I went to the ER that night around 10:30pm, at the ER, my symptoms were the same, but I started pulsation chills and some light-headache. I called Dr. Gahbauer who then came to ER. Saw me and discussed my case with the ER attending. Dr, Gahbauer stated that "the most it would do was decrease her lymphocyte count." (App-E3) Dr. Gahbauer also asked me to call Dr. Nag, but his wife said "he is sleeping". I went home around 3:00 am. On top of my symptoms, I felt very weak. I asked Dr. Gahbauer and Dr. Nag, if I could stay home to rest, they agreed. On May 17, 2002, I visited my family physician Dr. Burgin, he was not there, but his assistant suggested visit Employee Health. I saw Dr. Kirk, who asked me to fill out the accident report, I had another blood test there. Dr. Kirk also ordered to have the film badge read and have there safety officer to calculate the whole body dose. On the same day, I gave my sick note to Tim Nelson, the director of technology in our department, who is in charge in the absence of Dr. Gahbauer. Also I discussed with Dr. Nag about the safety issue, based on the Perez's book, on the page 501 "when using radioactive sources, the operating physician,...should work behind individual lead barriers..." However, Dr. Nag threatened me and said "my preference is that I don't want you work with me".

On May 20, 2002, I had another blood test. The results showed my lymphocyte absolute dropped from 1.9 to 1.5 to 1.2, and granulate absolute dropped from 5.2 to 2.8 on May 16th, 17th, and 20th 2002. On that day, I saw Dr. Burgin. He diagnosed Radiation Exposure and Neutropenia and suggested I get good rest and to check a blood test every other day. I gave the sick note to my department and returned to Boston on May 21, 2002.(App-E4)

On May 23, 2002, Dr. Samisami, the medical physicists, called and verbally reported from film badge reading that I had received 44mrem of deep dose (App-E5). Since I forgot to wear a ring badge on that day, based on the inversed square law and other factors, both my hands may have received 1735 mrem. OSU ALARA action level I for deep dose is 125mrem quarterly. I saw my family physician in Boston, Dr. Komer and had a blood test again on Mat 24th, 2002. The result showed that the absolute neutrophil and lymphocyte were still low and absolute Eosinophil was very low. I was very sick for three weeks, during my sick days, Dr. Gahbauer frequently talked with my physician Dr. Komer and repeatedly asked for a sick note, where in fact he already had one from Dr. Burgin and Dr. Komer.(App-E5)

On June 17, 2002, Dr. Gahbauer arranged for me to meet with Dr. Bauer, Dr. SamSami and himself, to convince me that my symptoms and signs were not caused by Radiation and that there was "no Radiation Exposure at all"

On June 18, 2002, I met Dr.Gahbauer again, he threatened me about possibly not permitting me to take my board exam. He stated that my in-service exam result was not good, but the report which he showed to me was not original. After meeting with Dr. Gahbauer and other staff, I did not feel safe to return work at our department. I consulted with Dr. Burgin who suggested that I should continue to get rest until a complete recovery (App-E 6).

The end of June of 2002, I talked with Dr. Andrew Thomas, the Assistant Dean, about the radiation exposure and in-training exam result.

On July 1st, 2002, I started my neurosurgery rotation. On 2nd day, I was forced to see Dr. Pariser (Chairman of the Committee on Physician Health). My annual salary had just been increased, as became a fourth year resident (my final year resident contract until graduation on June 30, 2003). (App-E.7)

On July 10th, 2002, I received the definitive appointment for the written examination from The American Board of Radiology.(App-E.2)

On July 18th, 2002, Dr. Gahbauer forced me to dictate the stop notes while I was doing my Neuro-Surgery rotation for those patients whom completed their treatment during my sick days (App-E8)

On July 23rd, 2002, I received a letter from Dr. Gahbauer, threatening to not let me taking the board exam, for which he had qualified me just before the Radiation Exposure(App-E9)

On July 24th, 2002, I was forced to see Dr. Irgo Janke (Psychiatry) and he asked me to pick up a diagnosis of "Academic problem or occupational problem", I also received a letter from Dr. Thomas stating that I did not have Radiation Exposure.(App-E9)

On July 26th, 2002, I wrote a letter to Dr. Andrew Thomas, asking to meet Dr. Makhjian, himself and other staff, regarding the Radiation exposure and in-training exam, but there were no response (App-E10)

On Aug. 6th, 2002, I wrote a letter to Dr. Gahbauer, asking the permission to attend the Radiobiology board review course at University of Louisville. I was denied, however my classmate Douglas Tippin and a third year resident Sherif Yacub were granted the education time and pay by department. To my best knowledge, both of them were not qualified for the Board Exam which I am the only one who received ~~definitive~~ appointment for the written examination from The American Board of Radiology.

On Aug. 12th, 2002, I returned to Boston, due to my epigastria pain and weight loss. I saw Dr. Komer, Dr. Zinny and Dr. Schapiro, I had an upper GI endoscope on Sept. 4th, 2002.(App-E11)

On Sept. 5th, 2002, I received a letter from Dr. Makhjian, which suggested I be evaluated by Dr. Janke again. on Sept.26, 2002, I received a note from a meeting with Dr. Makhjian (App-Ex12)

On Sept. 12th and 13th, 2002, I took the Board exam.(App-E13)

On Sept. 16th, 2002, Dr. Gahbauer forced me to see my family physician to evaluate, if I am "OK" to return to work. Dr. Burgin Stated that "Dr. Fan, is able to work effective immediately". (App-E14)

I requested On Sept.19th, 23rd, 29th, and Oct. 3rd, 2002, to attend the ASTRO annual meeting. I was entitled to this benefit as I was a fourth year resident at the time, and the only female, Asian resident. Again, I was not only denied this benefit, but was also put on call for two straight weeks. While my white male colleagues Douglas Tippin, third year male resident Sherif Yacob and a second year male resident Ben Liu were granted education time and pay by the department.(App-E15)

From Oct. 5th to 10th, 2002, I had no alternative but to pay to attend the ASTRO meeting myself, as I had many Radiation Oncologist job interviews at the meeting site.

On Oct. 11th, 2002, I returned to work right after the ASTRO meeting despite only four hours of sleep. Dr. Bauer handed to me a suspension letter, and threatened "if you don't see Dr. Janke, you have to clean your desk within 24 hours." My salary had also been cut since Oct. 8th 2002. My last pay check on Oct. 31, 2002, stated a "sick leave adjustment"(App-E16)

On Oct. 30th, 2002, at the first hearing meeting, I retained Mr. Charleston C. K. Wang to represent me. Mr. Robert Holder who represents the hospital, did not allow him speak (App-E17)

On Nov. 1st, 2002, I had a second Radiation Oncology job interview at SUNY, Syracuse, NY. I was offered the job that Day. They told me to start upon completion of my residency. I lost that job, because of my terminated on 12/17/02.(App-E18)

On Nov. 6th, 2002, I faxed a letter to the ABR, regarding the radiation exposure and transfer program. I received a reply letter from ABR (App-E19)

On Nov. 8th, 2002, I faxed a letter to Mr. Gould (NRC) regarding the Radiation Exposure. I also faxed a letter to Ms. Linda Thorse at a Radiation Oncology resident review committee at ACGME, regarding the Radiation Exposure and a resident transfer (App-E20)

On Nov. 13, 2002, I faxed a letter to Mr. Michael Rea, Assistant Chief at the Department of Commence Laws OSHA PERRP regarding the Radiation Exposure. On Nov 22, 2002, a letter was sent from Mr. Rea to Dr. Mekhjian (App-E 21)

On Nov. 20, 2002, I faxed a letter to Marsha A. Miller, at residency complaints at ACGME. Regarding Radiation Exposure and oncall schedules. On Nov. 25, 2002, a letter was sent to Dr. Gahbauer from Marsha A. Miller (App-E22)

On Nov. 26, 2002, a letter from Ms. Karen A. Holbrook, the president of OSU was sent to Dr. Fan regarding the Radiation Exposure. (App-E 23)

On Nov. 27th, 2002, I faxed a letter to Dr. Robert R. Hattery, the Executive Director of the ABR, regarding the Radiation Exposure and resident transfer (App-E.24)

On Dec. 6, 2002, filed first report of an injury, Occupational Disease (App-E25)

On Dec. 7th, 2002, Radiation Oncology second job interview at Central Care Center in Emporia, KS. (I lost that job, due to termination) (App-E26)

On Dec. 11th, 2002, I wrote a letter to Dr. Spigos, regarding the status of the suspension and requested to transfer.(App-E27)

On Dec..12th, 2002, faxed a letter to EEOC regarding the retaliation and discrimination (on June 3, 2003, Dismissal and Notice of Rights from EEOC)(App-E.28)

On Dec, 24th, 2002, I received a termination letter from my program director, dated on Dec.17, 2002.(App-E29)

On March 3rd, 2003, Radiation Oncology job interview at North Shore Cancer Center, Salem, MA (No job offer because of termination) (App-E30).

On March 31th, 2003, Hearing before District hearing Officer Andrew J. Klatt at the Industrial Commission of Ohio. This claim is allowed for "Neutropenia secondary to Radiation Exposure."(App-E 32)

Argument and Reasons for Granting Writ

On June 13th, 2003, based on facts above, petitioner filed a law suit at United States District Court District of Massachusetts. Case No.03-cv-11141.Pursuant to 28 U.S.C.§1331, 1332(a)(1) and 1441(a)(b)(c),(on the cover sheet Jurisdiction Federal question and Diversity; Nature of suit- 360 other personal injury, 442 employment, 440 other civil rights, 660 Occupational safety/ health, 710 Fair labor Standards Act, 790 Other Labor litigation). Also this case is requested to be heard and determined by a district court of three judges title 28 U. S.C.§2282). (App-E31)

On June 17th, 2003, an amended complaint was filed. Defendants moved to dismiss all claims for lack of personal jurisdiction and improper venue, or, alternatively, to transfer the case to the United States District Court Southern District of Ohio Eastern Division, a motion hearing was held at United States District Court district of Massachusetts. The Court found that there were genuine issues of material facts and asked if petitioner willing to transfer the case, petitioner agreed. Case No.03-cv-11141 was transferred to United States District Court Southern District of Ohio Eastern Division by Judge Young's order on Oct. 9, 2003.

Five Months later, Petitioner filed motion for summary judgment. Because respondents unreasonably ignored petitioner's amended compliant. On January 22, 2004, Judge James L. Graham ordered "plaintiff's motion for judgment (doc.10) is denied based on the affidavit of Dr. Reihard A. Gahbauer, **the court finds that there are genuine issues of material fact and that summary judgment is not appropriate.**"(App.24)

On Jan. 8, 2004, at preliminary pretrial conference, Magistrate Judge Able suggested appellant to file a 2nd amended complaint. On the same day, appellant handed "Demand Settlement Statement" to Wanda L. Cater, Respondents again agreed but failed make a reply on time.

On Jan. 14, 2004, Judge Able granted Petitioner's motion for a jury trial (app.25)

On Feb. 6, 2004, Respondents filed "Motion of all Defendants to dismiss", and "Answer to Amended Complaint by Defendants"

On Feb 13, 2004, Plaintiff filed "Opposition to Motion of all Defendants to Dismiss".(doc.34) quote:

> "...Plaintiff's claims are substantial and is based on 28 U.S.C § 1331 Federal question. § 1332 (a)(1) diversity of citizenship; amount in controversy. And 28 U.S.C.§ 1343. Civil right & elective franchise (a) (1) (2) (3) (4).*See City of Indianapolis v. Chase Nat'l bank, 314 U.S. 63, 69, 62 s. Ct. 15, 17 (1941).* Specifically, Plaintiff is a citizen of Massachusetts State, and Defendants are citizens of Ohio State.
>
> Based on 28 U.S.C § 1332 (a) the district court shall have original Jurisdiction of all civil action where the matter in controversy exceeds the sum or value of $ 75,000, exclusive of interest and costs. As a direct and proximate result of defendant's conduct (Radiation Exposure was intentional, employment discrimination retaliation under Title VII, FMLA, Breach of Contract, Breach of fair duty representation, Defamation, Whistleblower public policy)Cause petitioner **suffered damages exceeding ten millions Dollars.**
>
> Pursuant to F.R.C.P 12 (b)(6).When considering defendant's motion, the court must construe the factual allegations in the complaint in the light most favorable to the plaintiff. *See Stac Elecs. Sec, Litig.,* 89F.3d 1399,1403(9th Cir. 1996*); Jones v. Genernal Elec. Co.,*87 F.3d 209, 211 (7th Cir.1996*). See Sistrunk v. City of Strongville,* 99F 3d 194, 197(6th Cir 1996). *See Mayer v.Mylod* 988F.2d 635, 638 (6th Cir.1993) "A complaint should not be dismiss for failure to State a

claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief."(**the decision of the district court to dismiss Ehernberg's and Mayer's complaint is reversed**).In this case plaintiff sufficiently alleged facts necessary to prove each element of her cause of action. The nature of claims are asserted in the Original complaint which was filed on June 13, 2003, amended complaints which filed on June 17, 2003, and the Demand settlement statement.

Does the Ohio State University Medical Center, and all other Defendants entitled to 11th Amendment Immunity? "...**The Supreme Court has recently given a narrow interpretation to the definition of state agency**, *see lake Country Estates, Inc .v. Tahoe Regional Planing Agency,* 440U.S.391,99S.Ct.1171, 59 L.Ed.2d 401 (1979),"

To the Plaintiff's best knowledge. Drs. Nag, Gahbauer, Bauer and Samsami are employees of the James Cancer Hospital. Dr. Andrew Thomas is the Assistant Dean of Graduate Medical Education at Ohio State University Medical Center. Steven March is a medical health physicist, and radiation safety officer of Environmental Health and Safety. In the event plaintiff prevails, the payment of judgment will make out of the state treasury. Defendants are not qualified immunity. If that is not the case if they are qualified immunity, plaintiff asks this court for further proceedings against the individual Defendants, in the respect to Plaintiff's claims, for injunctive monetary relief for all the damages as direct or proximate results of Defendant's conduct.

Plaintiff is suing defendants in their individual capacity; the court should not have to guess at the nature of the claims asserted from original and amended complaints."

On February 23, 2004, Petitioner filed "Motion for Sanction Under F.R.C.P.11.(b)"(doc 35)due to Respondents Repeated delay to answer the complaint, Defendants denial of facts in the amended complaint, Petitioner quote:

> "Pursuant to Fed.R.Civ.P.11(b)(4),11(c)(2)'the denials of factual contentions are warranted on the evidence...' **Example1**. In the answer 4, defendants admitted Plaintiff's lawsuit, in some measure, and admitted that did not provide the lead shielding for protection... **Example 3**, in the answer 11, Defendants stated that 'Defendants were not aware of these filings at the time plaintiff was terminated'. In fact that, Defendants were aware of these filing before plaintiff was terminated...plaintiff received a letter from Mr.Roger L. Suppes, Chief, Bureau of Radiation Protection at Ohio Department of Health. He stated that '...in reference to your telephone conversation on **Nov. 8, 2002**, with the NRC,...an investigation of an allegation of the radiation oncology department at the Ohio States University Hospital in Columbus, Ohio was conducted **on Nov. 25, 2002**, by Doug Cosner ... ODH/BRP.(personnel contacted Dr. Reihard Gahbauer, Dr. Subir Nag, ...).**Also, on Nov. 25, 2002,** a letter from Marsha A. miller, Associate Executive Director of Residency Complaints (ACGME) **to Dr. Gahbauer** regarding " Lisha Fan, M.D. has filed a complaint...Regarding issues of the Radiation Exposure, unfair oncall schedule, did not receive equivalent training..." (App-E32)

On Feb 26, 2004, defendants filed "Defendants Motion to Strike Plaintiff's 'Motion for Sanction Under F.R.C.P.11(b)'" (doc.35)

On March 8, 2004, Petitioner filed "Plaintiff's Response to Defendants' 'Motion to Strike' And Reply in

Support of Response to Defendant' motion to dismiss also Requests Evidentiary Hearing"

On March 12, 2004, Respondants filed "Motion for Leave to file Amended/correct Answer, Instanter"(doc.42)

On March 23, 2004, Petitioner filed "Plaintiff's Memorandum in support Plaintiff's Motion for Sanction Under F.R.C.P. 11(b) to Defendants" and "Plaintiff's Memorandum in Support of Motion to Consolidate" quote:

> "...4. Answer 3(A 3) "... specifically denying that this Court has jurisdiction over the Defendants for any state law claims." Pursuant to Fed. R. Civ. P. 42, plaintiff had requested this Court to consolidate all actions. On March 8, 2004. Plaintiff asks this Court again to consolidate all actions. Based on this case involved a common Party *see Seguro de Servicio de Salud v. McAuto Sys. Group, Inc.*, 878 F2d5, 8 (1st Cir. 1989*);* these case involved common issues of law *see young v. City of Augusta,* 59 F3d 1160, 1168-69 (11th Cir.1995*)*; this case involved common issues of fact. *see Mary Ellen Enters. Camex,* Inc., 68 F3d 1065,1073(8th Cir. 1995).5. A 4. " ... **Defendants admit that lead shielding was not utilized in the brachytherapy procedure at issue..."**6. A5. "The University Defendants **admit** that Defendants the Ohio State University Medical Center had a duty to comply with state and federal laws relating to radiation safety..." "05/01/02-05/15/02 for both the whole body badge, serial number 5069688,and the ring badge, serial number 6680650. Because the badges were not changed on April 1, the previous badges for the January 1-March 31 wear period should be changed as well..." (a) letter to Landauer, Inc. written by Jennifer Houchin-Health Physicist, Radiation Safety Office of Environmental Health and Safety). (b) "Failing to provide lead shielding for radiation protection which

required by JACHO and NRC." Defendants deny this issue in A5, but they had admitted this issue on A4..." A8. "... Defendants admit that Plaintiff received an annual salary increase in July 2002. And admit her residency evaluation, prior to the events giving rise to her termination was generally satisfactory..."Plaintiff asks the court to consolidate (Workers' Compensation claim) the suits. A court may consolidate lawsuits if the suits relate to substantially the same subject matter and if consolidation does not result in delay, jury confusion, or prejudice to the parties. *see Herdrix v. Raybestos-Manhattan*, Inc., *776 F.2d 1492, 1495-96 & n.6 (11th Cir. 1985).*"...this matter was heard on 03/31/03 before District Hearing Officer Andrew J. Klatt, and allowed for 'Netropenia secondary to Radiation Exposure' Defendants appealed. The claim then was disallowed by Sandra Rollatta based on the reports **of non –exam physicians** Dr. Rauch and Dr. Randolph. **Neither of whom is a radiation expert.** Pursuant to Ohio Revised Code § 4121.38 (case notes and OAG) Non-examine physician's reports3, 6-8, 12, "the report of a non-examining Physician must expressly adopt the factual findings of one or more examining Physician; an equivocal report cannot be the basis of an order." Plaintiff filed timely appeal, but that was refused by Staff Hearing Officers.

The suits proposed to be consolidated are pending before this court and another Court within this district. *See Fed. R. Civ. P. 42(a); Investors Research Co. v. U.S. Dist. Ct.,* 877 F. 2d 777,777(9th Cir. 1989*)*.The proceedings involve a common party, *see Seguro de Servicio de Salud v. McAuto Sys. Group, Inc.,* 878 F2d5,8 (1st Cir. 1989); The proceeding involved common issues of law *see young v. City of Augusta,* 59 F3d 1160, 1168-69 (11th Cir.1995);

The proceeding involved common issues of fact. *see Mary Ellen Enters.v. Camex, Inc.,* 68 F3d 1065,1073 (8th Cir. 1995).Consolidation will reduce the time and expense of trying the actions separately. *Cantrell v. GAF Corp.,* 999 F 2d 1997, 1011 (6th Cir. 1993*); Hendrix,* 776 F.2d at 1495."

On April 5, 2004, Chief Judge James L. Graham ordered denying plaintiff' Motion for Sanction to Defendants, without given an Evidence Hearing. Later, petitioner learned that Judge Graham received Distinguished Jurist Award From OSU-Defendant on March 11, 2004.(App-E33)

On April 9, 2004, Defendants' response to Plaintiff's request for production of documents, etc., (App-E34).

On April 19, 2004, Plaintiff's answered Defendants' first set of interrogatories, and responded to request for productions of documents. etc., and on April 28, 2004, Plaintiff served "second Request for Production of documents, etc., to Defendants" (App-E 35 &36)

On April 30, 2004, Judge James L. Graham ordered "Counts I and III against all of the Defendants, and Count II against the individual Defendants are dismissed with prejudice. Counts IV through VII against all of the defendants are dismissed without prejudice." (App 34-53) He dismissed many Petitioner's claims in the middle of the discovery without evidence hearing. Judge Graham received Distinguished Jurist Award From Ohio States University-Defendant (March 11, 2004).One month after events in this order **he** deliberately mystified facts, refused evidences petitioner provided to the Court, and acted like Defendants' counsel. **The impartialness of his judgment is questioned.**

The order of April 30, 2004 (p12) A. Applicable standards for a motion to dismiss.(1) Fed R. Civ. P.12 (b)(1), Judge Graham stated that "when a defendants raises the issue of lack of subject matter jurisdiction, the plaintiff has burden of proving jurisdiction in order to survive the motion..."

with this issue Petitioner **had argued and survived** from the motion hearing at United States District Court of Massachusetts, on Oct.8, 2003. Also on Feb 13, 2004, Plaintiff filed "Opposition to Motion of all Defendants to Dismiss" was argued.(doc.34) And from the same order (p.13-14) 2.Fed R. Civ. P.12 (b)(6)Judge Graham stated "...A complaint must contain either direct or inferential allegations with respect to all material elements necessary to sustain a recovery under some viable legal theory..." Petitioner argued in the motion filed on Feb 13, 2004, "Opposition to Motion of all Defendants to Dismiss".(doc.34), well supported by all the facts written in the original and amended complaints and sufficient evidences support, and legal authorities as well as other Circuit Courts decision supports, petitioner pursuant to Fed. R. Civ.P 12 (b)(6).When considering defendant's motion, the court must construe the factual allegations in the complaint in the light most favorable to the plaintiff. *See Stac Elecs. Sec, Litig.,* 89F.3d 1399,1403(9th Cir. 1996*); Jones v Genernal Elec. Co.,*87 F.3d 209, 211 (7th Cir.1996*). See Sistrunk v. City of Strongville,* 99F 3d 194, 197(6th Cir 1996). Dismiss under 12(b) (6) is appropriate only where it is clear that no relief could be proved *See Mayer v.Mylod* 988F.2d 635, 638 (6th Cir.1993) Again, those issues have been well argued in the motion "Opposition to Motion of all Defendants to Dismiss".(doc.34)

From the same order (04/30/2004) Judge Graham dismissed **Count I Radiation Exposure was international.** In support his judgment, he cited two 6th circuits cases and quote "held that the Occupational Safety and Health Act does not create a private right of action in favor of employees"

The Act 29 U. S. C. § 654 (a)(1)(2).address complaint for OSHA(1) shall furnish to each of his employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;(2) Shall comply with occupational safety and health standards promulgated under this Act. **The Act** clearly defines duty of employer, and **is applicable to petitioner' radiation exposure injury caused by an unsafe workplace, not a private right of action.** Petitioner suffered from Neutropenia secondary to the radiation exposure injury on May 15, 2002, while performing a brachytherapy procedure. Defendants admit that petitioner's lawsuit, in some measure, is based on an incident of radiation exposure that occurred on May 15, 2002. Defendant also admit that lead shielding was not utilized (see picture of the incident drawn by petitioner, App-E4) as supported by ER report, laboratory results, physicians diagnosis, and judgment from District hearing officer Andrew J. Klatt at the Industrial Commission of Ohio, as well as other documents. See *Mckie Ford, Inc.v. Secretary of labor,* 191 F.3d 853, 856 (8th Cir. 1999).

Judge Graham dismissed **Count II. Discrimination, Retaliation under Title VII.** In this order (04/30/2002) He concluded that "because there is no cause of action for individual liability under Title VII, it is unnecessary to analyze whether plaintiff's factual allegations meet each of the elements necessary to assert a successful Title VII claim."

42 U.S.C.§ 2000e(b)(f) define "employee" "employer"- (b) "the term 'employer' means a person engaged in an industry affecting commerce who has fifteen or more employee…"(f) "The term 'employee' means an individual employed by an employer…" *See Deal v. State Farm Cty. Mut Ins.,* 5 F 3d 117, 118 n. 2 (5th Cir. 1993). "Determining whether a defendant as an 'employer' under Title VII…involves a two-step process. First, the defendant must fall within the statutory definition. Second, there must be an employment relationship between the plaintiff and

defendant." The Radiation Oncology Division of The Ohio State University Medical Center is an independently financed unit. There are more than twenty employees, under direction of Dr. Gahbauer. Dr. Nag. is the Chief of brachytherepy division. Dr. Bauer is the direct supervisor of residents. Dr.Thomas is the assistant Dean of Graduate Medical Education at Ohio State University Medical Center. They all have capacity to make decision in the hiring and discharging of employees, thus the cause of action for individual liability (under Title VII)are applicable to them.
29 U.S.C§660(c) (1) "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or cause to be instituted any proceeding under or related to this chapter or has testified ..."

Judge Graham also dismissed **Count III. FMLA** in this order (04/30/2004). He stated that "Defendants argue that Count III of plaintiff's second amended complaint fails to state a cause of action under the FMLA as it related to the individual defendants in the public employment setting..." Also, he stated that "...a university hospital was a state agent and immune from plaintiff's claims...the court concludes that Count III ... must be dismissed as it relates to the individual defendants and to OSU." Petitioner, aware it was incumbent on her to take all necessary steps to support her grievances, filed report regarding radiation exposure injury to ABR, NCR, ACGME, OSHA in Nov., 2002.and to Industrial Commission of Ohio on December 6, 2002 and EEOC on December 12, 2002. All those activities were protected by laws, as petitioner have argued in Count II. Those Defendants are liable for this count, due to the definition learn meaning of "employer". Pursuant to 29 U.S.C.§ 2615 (a)(b). "(1)Exercise right- It shall be unlawful for any employer to interfere with, restrain, or deny the exercise..." "(2) Discrimination- It shall be unlawful for any employer to discharge or in any manner discriminate against any individual..."(3) Interference with proceedings or inquiries-..." 29 U.S.C.§ 2617 (a)(1) " any employer who violated section 2615 of this title shall be liable to any eligible employee affected for damages equal to the amount of any wages, salary, employment benefits..." **Petitioner was discharged within one week after all those reports were filed.** Concerning defendants' and OSU qualification for immunity. *See Will v . Michigan Dept. of State Police*, 491 U. S. 58, 67, 109 S.Ct. 2304, 2310 (1989). "We cannot conclude that § 1983 was intended to disregard the well-established immunity of a State from being sued without its consent. At 71, 2312: We hold that neither a State nor its officials acting in their official capacities are 'person' under § 1983." Also see *City Of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U. S. 687, 709, 119 S.Ct. 1624, 1638 (1999). "We hold that a § 1983 suit seeking legal relief in an action at law within the meaning of the [7th] Amendment [jury guarantee]."

Judge Graham dismissed **Count IV through VII – State Law Causes of Action,** in this order (04/30/2004). He stated that "the defendants argue that these state law claims should be dismissed because the Eleventh Amendment of the Constitution bars this Court's exercise of subject matter jurisdiction over these claims..."Petitioner again pursuant to U.S.C. § 1983 Civil Action for Deprivation of Rights "Every person who, under color of any statute, ordinance,..., any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and law, shall be liable to the party injured in an action at law..." *Robinson v. City of Pittsburgh,* 120 F. 3d 1286, 1294 (3 d Cir. 1997) " 'A defendant in a [§ 1983] action must have personal involvement in the alleged wrongs.' '[A]ctual knowledge and acquiescence' suffices for supervisory liability because it can be equated with 'personal direction' and 'direct discrimination by the supervisor.'[A] person who fails to act to correct the conduct of someone over whom he or she has no supervisory authority cannot fairly be said to have 'acquiesced' in the latter's conduct."

On May 5, 2004, Plaintiff served first set of interrogatories to defendants and other persons, before receiving order from Judge Graham. (App-E36)

On May 10, 2004, Plaintiff filed "Pliantiff's Memorandum in Support of Motion to Recuse" quote:"The due process clause of the U.S. Constitution entitles a person to an impartial and disinterested tribunal in all cases. *Marshall v. Jerrico, Inc.,* 446U.S. 238,242, 100 S.Ct.1610, 1613(1980)."

On May 14, 2004, Defendant filed "Motion of the Ohio States University Medical Center to Change Caption of Action" (Petitioner later learned the Motion for Disclosure of primary Expert Witness by Defendants was terminated, Petitioner was not informed of this by the Court and Defendants, during the proceeding).

On May 25, 2004, Petitioner filed "Opposition to Defendants' motion for a protective order "and "Motion to Compel Plaintiff's Deposition" and "Motion to Defendant the Ohio States University Medical Center to Change caption of Action" see doc.56.

On June 7, 2004, Petitioner went to the Consulate General of the People's Republic of China, to complaint this very case. On June 15, 2004, Cui Ai Min, Deputy Consulate General wrote a letter to Judge James L. Graham. (App-E37)

On June 10, 2004, Judge James L. Graham denied Petitioner' "Motion to consolidate (Workers' Compensation claim)"(App.29-33)

On June 16, 2004, Petitioner and her husband attended a settlement conference with Mediator Mark Landes, and Mr. Christopher E. Hogan, Mr. John Biancarmano representing the Defendants. On the same day petitioner filed a motion to extend time to file notice of appeal and request the hearing for argument and evidence. There were no opening statements. Parties separated to in two different rooms. Petitioner was left in room alone.

On July 12, 2004, Judge Graham ordered case set for a trial on September 19, 2005.(doc. 62).

On July 23, 2004, petitioner filed "Petition for a Writ of Certiorari" to the Supreme Court of the United States for Judge Graham's order on April 30, 2004.

On July 29, 2004, Petitioner received a letter from 6th circuit court stating that this case has been docketed as No. 04-3969.

On July 30, 2004, the district court's order denied petitioner's June 16, 2004 motions. Petitioner was also ordered to submit a deposition within 30 days of the date of this order. When the District Court already knows of the Petitioner' deposition served on April 19, 2004.(App26-28)

On August 10, 2004, appellate wrote a letter to the Honorable Judge Merritt, of the 6th circuit Court regarding the confusion in docketing.(App-E 38)

On Aug. 18, 2004, case No. 04-3969 was dismissed by Clerk Leonard Green.(App.5-6).

On August 19, 2004, Petitioner filed a motion for relief and expedited appeal, to compel Defendants's deposition, panels, and brief and appendix at the 6th circuit court.On December 9, 2004, the day before your court had conference on December 10, 2004 for case No. 04-6768. The 6th Circuits Court dismissed Case No. 04-4079 which appellant timely filed on August 19, 2004, without address motions.

On August 24, 2004, Appellate filed "Motion for Sanction Under Fed. R. Civ. P. 37, Motion for protection order under Fed. R. Civ. P. 26 (c), Submit to Deposition per Judge Graham's Order (07/30/04) and Appendix (A-Z, other

1-16). Those were served by Express Mail. The court below manipulated docketing on August 26, 2004. Petitioner faxed a letter to Ms. Tammy M. Tomus to request the correction of docketing date.(App-E39)

On October, 25, 2004, district court final judgment DISMISSED all Petitioner's claims. This final summary judgment mostly rely on Dr. Gahbauer's affidavit. And **No** hearing and trial (App.7-23).

Pursuant to F.R.C.P. 56.(c) Motion and Proceedings Thereon. "The motion shall be served at least 10 days before the time fixed for the hearing… if the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." **Did the court below set up the time for hearing? No** Judge Graham made a totally reversed conclusion based on the same affidavit (Dr. Gahbauer's) on January 22, 2004, He state that "**the court finds that there are genuine issues of material fact and that summary judgment is not appropriate.**"

Count 1. Radiation Exposure was intentional. Defendants had duty to exercise the Radiation Safety Guideline, NRC regulation and Occupational Safety & Health Act of 1970, 29 U.S.C.§654 (a)(1)(2).*See Whirlpool Corp.v. Marshall,* 445 U.S. 1, 3-4, 100 S. Ct. 883, 886 (1980). "Among the rights that the Act so protects, is the right of an employee to choose not to perform his assigned task because of a reasonable apprehension of death or serious injury coupled with a reasonable belief that no less drastic alternative is available *At 11, 890*: This right clearly conforms to the fundamental objective of the Act- to prevent occupational deaths and serious injuries. *At 12*: [OSHA] does not wait for an employee to die or become injured. It authorized the promulgation of health and safety standards and the issuance of citations in the hope that these will act to prevent deaths on injuries from ever occurring". Defendants breached that duty in following ways (a) Failing to timely change personal monitor devices (film and ring badges). (b) Failing to provide lead shielding for radiation protection which is required by JACHO and NRC. (c)Failing to report to NRC after radiation exposure incident occurred on May 15, 2002. (d)Failing to report actual exposure dose and time period. (e)Failing or refusing to calculate the whole body exposure dose. As a result of this accident, appellate suffered from "Neutropenia, secondary to radiation exposure"

Count 2-7. Discrimination, Retaliation under title VII, FMLA, Breach of Contract, Breach of fair duty representation, Defamation and Whistleblower public policy. Pursuant to 42 U. S.C. § 1981.(b) Equal rights under the law... the term " make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.(c). Protection against impairment. See ***Jones v. R.R. Donnelley & Co. 124 S. Ct.*** 1836-1838 (124 Supreme Court Report 2004). See ***Morrow v. Putman*** 142 F. Supp. 2d. 1271-1276. P See ***Brown v. Board of Education*** 347 U.S 48, 495 "We conclude that in the field of public education...We have now announced that such segregation is a denial of the equal protection of the law". See ***Pennsylvania State Police v. Suders***124 S. Ct. 2342-2353 "Title VII encompasses employer liability for constructive discharge. Civil Rights Act of 1964,§701 et seq., 42 U. S.C.A. §2000e et seq." "for atmosphere of sexual harassment or hostility to be actionable under Title VII, offending behavior to alter conditions of victim's employment and create abusive working environment. Civil Rights Act of 1964, §701 et seq., 42 U. S.C.A. §2000e et seq." Federal Civil Procedure "Genuine issues of material fact precluded summary judgment on employee's claim that employer was vicariously liable under

Title VII for alleged hostile work environment created by supervisor, resulting in constructive discharge. Civil Rights Act of 1964, §701 et seq., 42 U. S.C.A. §2000e et seq."

In this final judgment of Judge Graham not only violated the U.S. Constitution [Article VII.] (1789) but also has no factual basis. Based on what facts, did Judge Graham grant defendants' motion for Summary Judgment? Judge Graham has denied the Petitioner the chance of an evidence hearing, cross-examining adverse witness and an unbiased tribunal. He covered the facts and evidences, ordered dismiss of most counts of her claims.

In this judgment, on page 5: "Plaintiff was frequently absent without authorization during her residency" **This was not true.** Post radiation exposure, I was suffered from Neutropenia secondary of the radiation exposure (supported by Dr. Boggs', Dr. Burgin's and Dr. Komer's diagnosis and lab reports). Aug. to Sept., 2002, sick notes from Dr. Komer and Dr. Zinny were sent to the program director by certified mail. See a note from hospital administration meeting on September 3, 2002 "Dr. Komer- excuse through end of August, Dr. Zinny- excuse 8/28-30".I also received full pay between May 1, 2002 and September 30, 2002, which proves I was authorized to have sick and vacation leave (App-E40). During that period, I was suffering epigastria pain and weight loss, due to stress caused by **repeated forcing** evaluations by Dr. Irgo Janke (Psychiatry), without given reasons; **forcing** dictations of the discharge notes while I was doing outside of rotation; **threating** not let her taking the Board Exam; **claiming** her in-service exam result was not good, but not to show her original report; **repeat denying** her to receive the same benefits and education opportunities from her white male classmate and male junior residents; **violating** ACGME guideline, by put appellant on call two weeks straight. **Appellant' last evaluation was superior on September 30, 2002 and she was suspended from the**

program on October 8, 2002 While she was at ASTRO meeting. Appellant learned this news when she returned to work on Oct. 11, 1002. In this judgment, on page 6, "In September 2002, Dr. Gahbauer alerted plaintiff that she had exceeded the allowed time for absences..." **This was not true.** See a letter from the ABR ,Dr. Hattery to Dr. Gahbauer. "... I have reviewed the information and calculated that as of 8/28/2002 Dr. Fan has had 113 days away from your program." (App-E40). In this judgment, page 6, "... Plaintiff was scheduled to be on call during that time. Dr. Gahbauer denied her request because defendant had already funded her attendance at this meeting in 2000 and she used part of the provided funds to take a personal vacation" **This was not true.** I attended International Society of Intra-operative Radiation Therapy. Because my poster entitled, "*IORT with Electron Beam or HDR for Lung Neoplasms*", had been accepted for presentation at the Second International Conference of the Society of Intraoprative RadiationTherapy, October 2000 in Boston. My white, male classmate Dr. Douglas Tippin had also attended the same meeting. (App-E41). In this judgment, page 7, "Plaintiff made no arrangements for someone to cover her shifts while she attended the meeting from October 5-10, 2002." **This was not true.** Very frequently in the past, due to lack of residents, our attending doctors would take calls by themselves, especially when where was a conflict between education event and clinical duty. We had only five residents in our program at the time. I was the only female and fourth year resident. My program director granted my white male classmate Dr. Tippin, and two junior male residents go to the meeting. I asked a second year resident, who because of personal matter, could not cover my call. I had informed my attending Dr. Bauer and Dr. Grecula that I would not able to on call with them, and it was the only year I could enjoy this education event. **I was again denied.** See ***Brown v. Board of***

***Education 347 U.S 48, 495** "We conclude that in the field of public education the doctrine of 'separate but equal' has no place...We have now announced that such segregation is a denial of the equal protection of the law".* To my best of knowledge, there were no patients under care while I attended the meeting from October 5-10, 2002. In this judgment, page 8, "In order for plaintiff to establish a prima facie of a hostile work environment, she must prove the following elements..." Petitioner proves those elements as following (1) Petitioner is the only Asian and female resident in the program.(2) She was a 4th year resident in the program.(3) she was suspended eight days after receiving a "superior" on her last evaluation on Sept. 30, 2002, she was wrongfully terminated six months before graduation. (4) Her male white colleagues and male junior residents were treated more favorably. In this judgment, page15, "Retaliation" from Nov. 6, 2002, to Dec. 12, 2002. Appellant filed report to ABR, NRC, OSHA, ACGME, Dr. Karen A. Holbrook, the president of OSU, First report of an injury, Occupational Disease, and EEOC. **All the activity were protected during the Nov-Dec, 2002,** Under 2 U.S.C. §1317 Congressional Accountability Act, 42 U. S. C. § 2000e-3(a) Equal Employment Opportunity Act (Title VII), 5 U.S.C. § 6385 Family & Medical Leave Act (FMLA), 29 U. S. C. §158(a)(4) National Labor Relations Act (NLRA), 29 U. S. C. § 660(c) Occupational safety & Health Act (OSHA) and 5 U. S. C.§ 7116(a) (1) Unfair Labor Practices Act. In this judgment, page 18, "like the motion for summary judgment, this motion is unopposed by plaintiff" Because Petitioner believed that since Judge Graham denied petitioner's motion for summary judgment, **based on the affidavit of Dr. Gahbauer, the court finds that there are genuine issues based on material facts. Judge Able granted for jury trial. Jury trial set for 9/19/05.** In this judgment, page 19, "Defendant moves to dismiss this action pursuant to F. R.

Civ. P. 37..." During the period of discovery, Petitioner engaged in good faith and followed the rules of timely disclosure information, responding Defendant' requested production of document and answering interrogatories (App-E35) and agreeing to take deposition by telephone. Defendants however unjustifiably refused to submit to deposition, and answer interrogatories.

On November 22, 2004, Petitioner timely filed appeal at 6th circuit court for the final judgment of the district court.

On March 7, 2006, Petitioner filed "Motion to supply additional evidence to support radiation exposure injury and to support wrongfully termination, and request oral argument." (App-E42)

On July 25, 2005, Defendant filed a brief to 6th Circuit Court, on the fact sheet for Title VII Appeals. Wanda L. Carter reported: "dated EEOC complaint filed: 3/5/03" **That was not true. Fact** is that on Dec.12th, 2002, I faxed a letter to EEOC regarding the retaliation and discrimination, On January 8, 2003, a letter from EEOC Ms. S. Austin-Investigator Support Assistant regarding the scheduling of a telephone interview on Jan. 15, 2003(App-E28)

On March 21, 2006, the Court for the Sixth Circuit **affirmed** district court's judgment, noting that "under Fed. R. Civ. P. 37. We review the dismissal of a case under Rule 37 for an abuse of discretion on appeal. *Regional Refuse Sys., Inc. v. Inland Reclamation Co.,* 842 F. 2d 150, 154 (6th Cir. 1988). Petitioner pursuant to F.R.C.P.31. "Deposition upon written questions". Petitioner not only served deposition to Defendants on April 19, 2004, by answering defendants' first set of interrogatories, but also submitted the deposition to the District Court on August 24, 2004, See *Contton v. Massachusetts Mut. Life ins. Co.,* 402 F. 3d 1267, 1291-92(11th Cir. 2005) "When a district court imposes sanctions under [FRCP] 37(b), 'the propriety of [the sanctions] depends in large part on...we believe that an important factor is whether the entry of that order was itself an abuse of discretion'…". See *McMullen v. Bay ship Mgmt.,* 335 F. 3d 215, 217 (3rd Cir. 2003).

> "…The plaintiff had clearly stated his position and the issue had been briefed and argued before the magistrate judge at a pretrial conference. The reasons underlying the Rule [FRCP 37]-active judicial review of the discovery dispute and recognition of the gravity of the issue-had already been satisfied. Thus, issuance of an order in this situation…would have been an exercise in futility."

Conclusion

In this case, The Courts below made decision only rely on defendants' affidavit, Pursuant to Amended Constitution VII, 5 U.S.C § 556,§557,Petitioner strongly believes that her Constitution rights has been contravened, and her interests were affected by such contravention. Pursuant to Supreme Court Rule 10(a)(c), 13(1), Petitioner respectfully asks your great honorable Justices **to grant hearing** to this case by your highest court of the United States, to grant the Petition for a Writ of Certiorari, and to **Grant a jury trial** as the constitution guaranteed.

Respectfully submitted,

Lisha Fan, M. D., Pro Se. (June 16, 2006 filed)
(corrected & mailed within 60 days)

17 Jackson St.
Newton, MA 02459
617-964-0047

Cc: a. Mr. Tim Russert (Meet the Press)
  b. family members, friends, patients, colleagues and News medias, and members of local church
  c. The Consulate General of the People's Republic of China in New York

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 04-4494

Lisha Fan, M.D.,
Plaintiff-Appellant
v.

Subir Nag, M.D., et al
Defendants-Appellees

Appeals from the United States District Court
For the Southern District of Ohio
(Filed March 21, 2006)

Before: DAUGHTREY and GILMAN, Circuit Judges; RUSSELL, District Judge.*

Lisha Fan, M.D., appeals pro se from a district court judgment that dismissed a civil rights action in which she sued Ohio State University Medical Center ("OSU") and several of its employees. Fan alleged that the defendants violated her rights during her medical residency at OSU. She raised claims under the Occupational Health and Safety Act ("OSHA"), 29 U.S.C. §654(a), Title VII of the Civil Rights Act of 1964, 42U.S.C.A. §2000e(a)(1), the Family Medical Leave Act of 1993(" FMLA"), 29 U.S.C.§ 2615, and state law.

The district court dismissed most of Fan's claims on April 30, 2004. *See* Fed. R. Civ. P.12(b). OSU filed a motion for summary judgment on Fan's remaining Title VII claim against the hospital itself. It also moved to dismiss the case because Fan had not submitted to a deposition as directed by the court. On October 25, 2005, the district court granted OSU's unopposed motion to dismiss the case, under Fed. R. Civ. P.37. The court also awarded summary judgment to OSU on Fan's Title VII claim, as she had not alleged facts that would support her claim of a sexually hostile work environment, had not established a prima facie case of retaliation or discrimination based on the termination of her employment, and had rebutted the legitimate, non-discriminatory reasons that OSU gave for its actions. *See* Fed. R. Civ. P.56. Fan now appeals, moving for miscellaneous relief.

The district court properly noted that OSHA does not provided for a private right of action. *See Ellis v. Chase Communications Inc.*, 63 F. 3d 473, 477-78 (6th Cir. 1995). In addition, the court properly held that Fan did not have a viable Title VII claim against any of the individual defendants. *See Akersv. Alvey,* 338 F. 3d 491, 500 (6th Cir. 2003).It also properly ruled that she did not have a cognizable claim under the FMLA or state law. *See Raygor v. Regents of Univ. of Minn.*, 534 U.S 533, 540-41(2002); *Mitchell v. Chapman,*343 F. 3d 811, 829-833 (6th Cir. 2003). Fan has not raised a specific challenge to the district court's rationale for dismissing these claims. Therefore, she has abandoned them for purposes of appellate review. *United States v. Mick,* 263 F. 3d 553, 567 (6th Cir. 2001); *Buziashvili v. Inman,* 106 F. 3d 709, 719 (6th Cir. 1997).

On July 30, 2004, the district court ordered Fan "to submit to deposition within thirty (30) days." Fan did not comply with this order even though she was provided notice that a deposition had been scheduled for August 26, 2004. Thus, the court granted OSU's motion to dismiss the case under Fed. R. Civ. P. 37. We review the dismissal of a case under Rule 37 for an abuse of discretion on appeal.

Regional Refuse Sys., Inc. v. Inland Reclamation Co., 842 F. 2d 150, 154 (6th Cir. 1988). "[I]f a party has the ability to comply with a discovery order and does not, dismissal is not an abuse of discretion." *Id.*

Fan apparently argues that she was not required to personally attend the deposition because the defendants did not comply with all of her discovery requests and because she could have been deposed by telephone. However, the district court granted the defendants' motion for a protective order and denied Fan's motion to be deposed over the phone, in the same order in which it directed her to submit to OSU's deposition. Fan simply refused to comply with the court's directive. Thus, the court did not abuse its discretion in dismissing the case. *See Jourdan v. Jabe*, 951 F. 2d 108, 110 (6th Cir. 1991); *Regional Refuse Sys.*, Inc., 842 F. 2d at 154-56.

We review the district court's award of summary judgment de novo. *See Copeland v. Machulis,* 57 F. 3d 476, 478 (6th Cir. 1995). Summary judgment is appropriate if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.* The movant meets its initial burden by pointing to an absence of evidence regarding an essential element of the case. *Id.* At 478-79. The Burden then shifts to the non-movant to bring forth significant probative evidence which shows that there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *Copeland*, 57 F. 3d at 479.

The district court properly awarded summary judgment to OSU on Fan's Title VII claims. Fan apparently argues that disputed issues of material fact precluded summary judgment. However, OSU supported its summary judgment motion with several documents, including the affidavit of Dr. Reinhard Gahbauer, the program Director of the Division of Radiation Oncology. Dr. Gahbauer averred that he made the initial decision regarding Fan's suspension and termination and that OSU had legitimate, non-discriminatory reason for its actions. He summarized those reasons as follows:

> 5. The reasons for Dr. Fan's termination from the program were her leaving the residency program without approval on least two occasions, refusing to obey direct orders of her supervisors, abandoning her patients, and resisting appropriate attempts by the faculty to offer her instruction.

Fan did not file a timely response to OSU's well-supported motion for summary judgment. Thus, the dismissal of her Title VII claim was also appropriate because she did not meet her burden of producing significant probative evidence which showed that there was still a genuine issue for trial. Fed. R. Civ. P. 56(e); *Copeland,* 57 F. 3d at 479.

We have considered Fan's other arguments, and they are all equally unavailing.

Accordingly, the district court's judgment is affirmed and all pending motions are denied as moot. Rule 34(j)(2)©, Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
LEONARD GREEN Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 04-3969

Lisha Fan, M.D.,
Plaintiff-Appellant
v.

Subir Nag, M.D., et al
Defendants-Appellees

Appeals from the United States District Court
For the Southern District of Ohio
(Filed Aug. 18, 2004)

Before: KEITH, Martin, and ROGERS, Circuit Judges.

This matter is before the court upon initial consideration of appellate jurisdiction.

A review of the documents before the court indicates that by order entered April 30, 2004 the district court partially dismissed the case. By order entered June 10, 2004, the district court denied various motions filed by the plaintiff, and granted the motion filed by the defendants to substitute a party and to change the caption of the action to reflect that the Ohio State University Medical Center is the only remaining defendant. The plaintiff appealed on July 26, 2004 from an unspecified order.

This court lacks jurisdiction over this appeal. No final or appeasable order terminating all the issues presented in the litigation has been entered. *See Firestone Tire & Rubber*

Co.v. Risjord, 449 U.S. 368, 373 (1981); *Catlin v. United States,* 324 U. S. 229,233 (1945).

It is ordered that the appeal is dismissed.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
LEONARD GREEN Clerk

UNITED STATES DISTRICT COURT SOUTHERN
DISTRICT OF OHIO EASTERN DIVISION

CIVIL CASE No.2:03-cv-966

Lisha Fan, M.D.,
Plaintiff
v.

Subir Nag, M.D., et al
Defendants

(Filed October 25, 2004)

OPINION AND ORDER

Pro se plaintiff Lisha Fan, M.D. ("Plaintiff") bring this employment discrimination [1] action against defendant The Ohio State University Medical Center("Defendant"). [2] Specifically, plaintiff alleges the " Defendants intentionally discriminated sexually hostile work environment and retaliated her [*sic*] because of her alleged Radiation Exposure and, ultimately, plaintiff were [*sic*] wrongfully terminated." Second Amended complaint, ¶ 6. This matter is before the court on defendant's motion for summary judgment filed on July 30, 2004. (Doc. No.64). Defendant also filed a motion to dismiss the case on September 17, 2004 based on plaintiff's failure to appear for noticed

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[1] Plaintiff's second Amended Complaint, which incorporates the allegations in the First Amended Complaint, alleged several other claims in addition to her employment discrimination claims. The court dismissed those other claims on April 30, 2004. Doc. No. 49.

[2] Plaintiff initially named as defendants several individual doctors and other personnel employed by defendant, but the court dismissed the claims against all of those individuals on April 30, 2004. Doc. No. 49.

Depositions. (Doc.No.75). Plaintiff filed a motion for sanctions and motion for protective order on August 26, 2004.(Doc. No. 70)

I. Standard

Under Fed. R. Civ. P. 56(c), summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *See Lapointe v. United Autoworkers Local 600*, 8 F. 3d 376, 378 (6th Cir. 1993); *Osborn v. Ashland County Bd. of Alcohol, Drug Addiction & Mental Health Serves.*, 979 F. 2d. 1131,1133 (6th Cir. 1992) (per curium)

The party that moves for summary judgment has the burden of showing that there are no genuine issues of material fact in the case. *Lapointe,* 8 F. 3d at 378. The moving party may meet its burden by showing that the nonmoving party lacks evidence to support an essential element of its case. *Barnhart v. Packrel, Schaeffer & Ebeling Co., L. P.A.,* 12 F. 3d 1382, 1389 (6th Cir.1993).

In response, the nonmoving party " cannot rely on the hope the trier of fact will disbelieve the movant's denial of disputed fact, but must ' present affirmative evidence in order to defeat a properly supported motion for summary judgment.'" *Street v. J.C. Bradford & Co.,* 886 F. 2d 1472, 1476 (6th Cir. 1989) [quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986)]. The Court must view evidence, all facts, and any inferences that may permissibly be drawn from the facts in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. Zenith Radio*

Corp., 475 U. S. 574, 587 (1986). *See also Eastman Kodak Co. v. Image Technical Servs., Inc.,* 504 U. S. 451, 456 (1992).

In reviewing a motion for summary judgment, " this court must determine whether 'the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Patton v. Bearden, 8 F. 3d 343, 346 (6th Cir 1993) (quoting *Anderson,* 477 U. S. at 251-52). "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson,* 477 U. S. at 247-48 (emphasis in original); *See generally Booker v. Brown & Williamson Tobacco Co., Inc.*, 879 F. 2d 1304, 1310 (6th Cir. 1989). *See also Gregory v. Hunt,* 24 F. 3d 781, 784 (6th Cir. 1994). A district court considering a motion for summary judgment may not weigh evidence or make credibility determinations. Adams v. Metiva, 31 F 3d 375, 379 (6th Cir. 1994).

Finally, a court must construe a pro se plaintiff's pleading more liberally than those pleadings prepared by an attorney. See, e.g., *Wells v. Jefferson County Sheriff Dep't* 159 F. Supp. 2d 1002, 1004-05 (S. D. Ohio 2001*)(citing Haines v. Kerner*, 404 U. S. 519 (1972)); *Jacobs v. Wilkinson*, No. 3: 98cv7573, 2000 U. S. Dis. LEXIS 2344, at *3 (N.D. Ohio Jan. 24, 2000)*)(citing Haines v. Kerner*, 404 U. S. 519 (1972)). However, pro se litigants "are not exempted or excused from Federal Rules governing pleading, dismissal for failure to state claims, and summary judgment." *Moore v. Holbrook*, 2 F 3d 697, 705 (6th Cir. 1993). *See also Mckinnie v. Roadway Express, Inc.,* 341 F. 3d 554, 558 (6th Cir. 2003) (" Ordinary civil litigants proceeding pro se, however, are not entitled to special treatment, including assistance in regards to responding to depositive [*sic]* motion.").

II. Procedural History

Plaintiff filed her complaint in the District Court for the Southern District of Massachusetts on June 13, 2003. On Defendant's motion, this case was transferred to the Southern District of Ohio on October 9, 2003. On February 6, 2004, Defendant filed a motion to dismiss and the court dismissed all of the claims except for plaintiff's Title VII claim against defendant. Defendant served a notice to take deposition of plaintiff, but plaintiff did not appear for her noticed deposition on June 7, 2004. On July 30, 2004, the court ordered plaintiff to appear in person for her deposition within thirty days of the order. Also on July 30, 2004, Defendant filed a motion for summary judgment. Plaintiff has not responded to defendant's summary judgment motion. On September 17, defendant moved to dismiss this case for plaintiff's failure to appear in person for her deposition.

III. Facts

Effective July 1, 1999, defendant employed plaintiff in the faculty title of Clinical Instructor-House staff after admitting her to the four-year medical Residency Training Program sponsored by The Ohio State University Hospitals. Plaintiff's residency was in the division of Radiation Oncology and her residency was in Columbus, Ohio.

Plaintiff was frequently absent without authorization during her residency. See defendant's motion for summary judgment, attached Affidavit of Dr. Reinhard A. Gahbauer, ¶

20. for example, plaintiff attended a radiobiology course on August 16-18, 2002, at the University of Louisville after Dr. Gahbauer, her program Driector, told her she did not have permission to attend. Gahbauer Aff.¶¶ 22-26. Plaintiff alleged that defendant permitted two male colleagues to attened and funded their attendance. Plaintiff failed to report to work after attending the review course and failed to arrange for anyone to cover her shifts. Gahbauer Aff. ¶ 25.

Subsequently, after receiving notice from plaintiff that she was taking vacation time in September, 2002, Dr. Gahbauer alerted plaintiff that she had exceeded the allowed time for absences and therefore could not graduate on June 30, 2003. Gahbauer Aff. ¶ 26 and Exhibit 10 thereto.

In late September,2002, plaintiff requested multiple times that the department fund expenses for her to attend a Radiation meeting during October 5-10, 2002. Gahbauer Aff.¶ 27. Again, Plaintiff was scheduled to be on call during that time. Dr. Gahbauer denied her requewst because defendant had already funded her attendance at this meeting in 2000 and she used part of the provided funds to take a personal vacation. Gahbauer Aff.¶ 28. In addition, Dr. Gahbauer denied her request because she had already used up the 120 days of absence time allowed by the American Board of Radiology ("ABR") and he thought she would be best helped by reviewing refresher courses in the department. Gahbauer aff.¶ 28. Plaintiff made no arrangements for someone to cover her shifts while she attended the meeting between October 5-11. 2002. Gahbauer Aff.¶ 30 and Exhibit 11.

The other residents who were permitted to attend the meeting had not yet used up the 120 days of absence time allowed. Gahbauer Aff.¶ 29.

On October 8, 2002, Dr. Gahbauer advised Dr. Fan that she was to be placed on indefinite suspension for the following reasons: insubordination, abandonment of patient care responsibilities, and serious breaches of her professional obligations to the program, her colleagues, and Radiation Oncology patients. Gahbauer Aff.¶ 32 and Exhibit 12 thereto. Dr. Gahbauer also provided plaintiff with the conditions under which she could return to the program. Gahbauer Aff. .¶ 32.

Plaintiff appealed this decision and the appeal committee, after a hearing on November 22, 2002, agreed with Dr. Gahbauer's decision. Gahbauer Aff. ¶ 33 and Exhibit 13 thereto. Thereafter, Dr. Gahbauer sent plaintiff a letter, dated December 17, 2002, which advise plaintiff that her residency was terminated effective on the same day. Dr. Gahbauer Aff. ¶ 34 and Exhibit 14 thereto.

IV. Discussion

Plaintiff alleges that defendant "intentionally discriminated against plaintiff in violation of Title VII, by creating a sexually hostile work environment and retaliated her [sic] because of her Alleged Radiation exposure [3] and, ultimately, Plaintiff were [sic] wrongfully terminated." Second Amended Complaint, Count 2.

In order for Plaintiff to establish a prima facie claim of a hostile work environment, she must prove the following elements:

(1) She was a member of a protected class;

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[3] Plaintiff initially alleged that defendant (and the individual defendants who were previously dismissed) intentionally exposed her to radiation during a medical procedure known as brachytherapy. See plaintiff's Second Amended Complain, ¶ 4. The court dismissed plaintiff's claim regarding this alleged radiation exposure on April 30, 2004. (Doc. No. 49).

> (2) she was subjected to unwelcome harassment; (3) the harassment complained of was based upon sex;
> (4) the harassment unreasonably interfered with the plaintiff's work performance or created a hostile or offensive work environment that was severe and pervasive; and (5) the employer knew or should have known of the charged sexual harassment and failed unreasonably to take prompt and appropriate corrective action.

Fenton v. Hisan, Inc., 174 F. 3d 827, 829-30 (6th Cir. 1999).

Defendant first argues that because "there is not one Allegation that would support a 'sexually hostile work environment claim,' the claim can only be viewed as a sex discrimination claim based upon her termination with a retaliation claim…" Defendant's motion for summary judgment, p.2. Indeed, Plaintiff fails to allege any harassment based upon her sex. Therefore, the cliam will be treated as a sex discrimination claim based upon plaintiff's termination and alleged retaliation claim.

A. Sex discrimination

Plaintiff offers no direct evidence of discrimination. In order to prove a claim of discrimination under Title VII by using circumstantial evidence, Plaintiff has the initial burden of establishing a prima facie case under the framework of proof set forth in *McDonnell Douglas Corp. v. Green* 411 U. S. 792 (1973): (1) that plaintiff is a member of a protected class; (2) that he was qualified for the job; (3) that he suffered an adverse employment decision; and (4) that similarly situated non-minority employees were treated more favorably.*Clayton v. Meijer, Inc.*, 281 F. 3d 605, 610(6th Cir. 2002).

Once Plaintiff establishes a prima facie case, the burden of production shifts to the employer to articulate a legitimate nondiscriminatory reason for the discharge or other employment decision. *Braithwaite v. Timken Co.*, 258 F. 3d 488, 493 (6th Cir 2001). Plaintiff then must demonstrate that the defendant's explanation for the employment decision is a pretext for discrimination. *St. Mary's Honor Center v. Hicks*, 509 U. S. 502, 507(1993) ("[T]he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times on the plaintiff.") A plaintiff can demonstrate pretext by showing that the proffered reason: (1) had no basis in fact; (2) did not actually motivate the defendant's challenged conduct; or (3) was insufficient to warrant the challenged conduct. Manzer v. Diamond Shamrock Chemicals Co., 29 F. 3d 1078,1084 (6th Cir. 1994).

1. Prima facie casein

In order for plaintiff to establish that she was treated differently, she must produce evidence that the other employees are " similarly situated in all respects." Gragg v. Somerset Tech. College, 373, F. 3d 763, 768 (6th Cir. 2004)(quoting Mitchell v. Toledo Hosp., 964 F. 2d 577, 583 (6th Cir 1992)). Plaintiff alleges that defendant treated her differently than her male colleagues. In particular, plaintiff alleges that defendant permitted male residents to attend two medical education courses/meeting, but forbade plaintiff to attend. In addition, plaintiff alleges that defendant even paid for the male residents to attend these courses.

Defendant argues that plaintiff was not similarly situated to he male colleagues who were permitted to attend the education courses/meetings. In support, defendant submitted the sworn affidavit of Dr. Reinhard A. Gahbauer, the Program Director in the division of Radiation Oncology. Dr. Gahbauer stated that plaintiff was absent from her residency without permission on multiple occasions to attend out-of state conferences and for vacation. Gahbauer Aff.¶¶ 22-30. Dr. Gahbauer also stated that plaintiff had exceeded the time off for absences allowed by the ABR. Gahbauer Aff.¶¶ 26 and 29.

Defendant's motion for summary judgment and Dr. Gahbauer's affidavit are unopposed. Plaintiff submitted noevidence that male residents who were permitted to attend the educational courses were similarly situated to plaintiff, ie, that they had multiple absences without permission and exceeded the absences permitted by ABR. As a result, Plaintiff cannot establish a prima facie case of sex discrimination. *See, e.g., Gragg,* 373 F. 3d at 768 ("in light of the significant differences that exist between [plaintiff] Gragg and each of the identified younger males, Gragg cannot prove age or gender discrimination by comparing her treatment to otheirs.").

2. Legitimate nondiscrimination reason

Even if plaintiff could establish a prima facie case of sex discrimination, defendant has set firth a legitimate nondiscriminatory reason for terminating plaintiff.

Dr. Gahbauer's affidavit field in support of defendant's motion establishes that one of the reasons that defendant terminated plaintiff was for repeated insubordination. For example, plaintiff was absent from her residency from may 16, 2002 to July 1, 2002. Plaintiff alleges that she was out those days because of alleged radiation exposure, even though defendant would have paid for such testing. Gahbauer Aff¶¶ 6, 8-20.

In August, 2002, Plaintiff failed to follow defendant's policy and submit a "request for leave" form prior to leaving to attend a review course out of state. Gahbauer Aff.¶¶ 23-24. Plaintiff failed to advise anyone in the department that she would be absent for this course from August 16-18, 2002. Gahbauer Aff.¶ 24. Plaintiff also failed to report to work the week after the review course in August even though she was scheduled to be on call that week and failed to arrange for anyone to take her place. Gahbauer ¶ 25.

On August 26, 2002, Plaintiff noticed defendant that she was not feeling well, but did not explain when would return to work. Gahbauer Aff.¶ 26 and Exhibit 9 thereto. On August 27, 2002, Plaintiff asked defendant for vacation time from September 2-11, 2002. Gahbauer Aff. ¶ 26. However, plaintiff's request for vacation arrived after she had begun her vacation. Gahbauer Aff.¶ 26. Dr. Gahbauer, her program director, warned her on September 3, 2002, that she would have exceeded the absence time to complete her residency. Gahbauer Aff. Exhibit 10 thereto.

Shortly thereafter, plaintiff attended an annual meeting in October, 2002, even after Dr. Gahbauer denied her permission to attend. Gahbauer Aff.¶¶ 27-28 and Exhibit 15 thereto. Plaintiff was scheduled to be on call during the time that she was absent for that meeting and made no arrangements for anyone else to cover her calls. Gahbauer Aff.¶¶ 27-30 and Exhibit 11 thereto.

Dr. Gahbauer testified that "[w]ith only four residents in the program. Dr. Fan's conduct created hardship on her peers and demonstrated a lack of respect for them amd for her patients." Gahbauer Aff.¶ 25. On October, 2002, defendant notified plaintiff that she was not be placed on indefinite suspension from further clinical and educational

Activities. Gahbauer Aff.¶ 32 and Exhibit 12 thereto. Defendant also provided her with the conditions under which she could return to the program. Gahbauer Aff.¶32 and Exhibit 12 thereto.

Dr. Gahbauer stated that plaintiff was suspended for "her insubordination, abandonment of patient care responsibilities, [and] serious breaches of her professional obligations to the program, her colleagues and patients of the Radiation Oncology department." Gahbauer Aff.¶ 32. When plaintiff appealed the suspension, the appeal committee agreed with the suspension on November 27, 2002, stating:

> [Plaintiff] left the program without approval on at least two occasions, refused to obey direct orders of her supervisors, failed to respect the interests of her colleagues and her patients, and she has resisted appropriate attempts by the faculty to offer her instruction and constructive advice.

Gahbauer Aff.¶ 33 and Exhibit 13 thereto.

In response to defendant's legitimate nondiscriminatory reason for terminating plaintiff, plaintiff has put forth no evidence that defendant's proffered reason for terminating plaintiff was pretextual. Indeed, plaintiff has failed to respond at all to defendant's motion for summary judgment. Because plaintiff has not met her burden and cannot demonstrate that defendant's legitimate nondiscriminatory reason is pretextual, defendant is entitled to summary judgment on plaintiff's sex discrimination claim.

B. Retaliation

Plaintiff alleges that defendant retaliated against her in Violation of Title. Second Amended complaint,¶ 6. Title VII Prohibits

> an employer from retaliating against any employee who has ' opposed' any practice by an employer made unlawful by Title VII; and prohibits an employer from retaliating against an employee who has 'participated' in any manner in an investigation under Title VII.

Johnson v. Univ. of Cincinnati, 215 F. 3d 561, 578 (6th Cir 2000) (explaining 42 U.S.C. § 2000-3(a) (1994)).

A retaliation claim is governed by *McDonnell Douglas* framework for shifting burdens of production and proof. *Harrison v. Metro. Gov't of Nashville and Davidson County, Tennessee,* 80 F.3d 1107, 1118 (6th Cir. 1996). Plaintiff must first establish a prima facie case, the burden of production then shifts to defendant to articulate a legitimate nondiscriminatory reason for terminating plaintiff. *Abbott v. Motor Co.* 348 F. 3d 537, 542 (6th Cir. 2003). If defendant establishes a legitimate nondiscriminatory reason, plaintiff must demonstrate that defendant's proffered reason is pretextual. *Id.* Throughout this burden-shifting framework, the plaintiff always bears the burden of persuasion. Id

1. Prima facie case

In order to establish a prima-facie case of retaliation, a plaintiff must establish that: (1) she engaged in protected activity; (2) the exercise of her civil rights was known to the defendant; (3) thereafter, the defendant took an employment action adverse to the plaintiff; and (4) there was a causal connection between the protected activity and the adver employment action. Wofe v. Norfolk Southern Railway Co., No. 01-5239, 2003 WL 2007936, at *2 (6th Cir. Apr.29, 2003); Nguyen v. City of Columbus, 229 F. 3d 559, 563(6th Cir. 2000).

Plaintiff alleges that defendant retaliated against her "because of her Alleged Radiation Exposure." Second Amended Complaint ¶ 6. More particularly, plaintiff alleged that she "had a radiation exposure incident during the low dose rate brachytherapy procedure and I was denied the use of lead shielding for protection. Since this incident, I have been treated differently by my Program Director and rest of the staff." Gahbauer Gahbauer Aff., Exhibit 16 thereto (Plaintiff's EEOC charge).

Prior to her termination, plaintiff filed complaints regarding her alleged radiation exposure with the Accreditation Council for Graduate Medical Education and the Ohio Department of Health. Plaintiff fails to explain how this is protected activity under Title VII. Even assuming that the complaints could somehow be considered protected activity, the evidence shows that although the defendant was aware of these complaints prior to plaintiff's termination, the complaints were not connected to plaintiff's termination. Defendant fas submitted the sworn testimony of Dr. Gahbauer that "[a]ny complaints she made to outside agencies or to me or anyone else at the University had no bearing on my decision "to terminate plaintiff." Gahbauer Aff.¶¶ 34-35; Amended Answer ¶ 11.

Plaintiff has offered no evidence to rebut this sworn testimony. Instead, plaintiff only offers her own conclusory allegations that there was a causal connection between protected activity and her termination. Hearsay, opinion, and conclusory allegations are inadmissible in opposing a motion for summary judgment. See. e.g., Hein v. All Am. Ply¶wod Co., 232 F. 3d 482, 488 (6th Cir. 2000). As a result, plaintiff cannot establish a prima facie case of retaliation.

2. Legitimate nondiscriminatory reason

Even if plaintiff had established a prima facie case of retaliation, plaintiff's claim would still fail because plaintiff presented no evidence to show that defendant's articulated legitimate reason for her termination was pretextual. Defendant is entitled to summary judgment on plaintiff's retaliation claim.

V. Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P. 37(d)

In addition to its motion for summary judgment, defendant also filed a motion to dismiss pursuant to Fed. R. Civ. P. 37(d) on September 17, 2004. (Doc. No. 75). Like the motion for summary judgment, this motion is unopposed by plaintiff.

A. Factual background

Defendant alleges that over the past several months, it has engaged in good faith negotiation with plaintiff to schedule plaintiff's deposition. Defendant's Motion to Dismiss, P. 2. Plaintiff informed defense counsel that she would not appear in Columbus for her deposition, but would only consent to a deposition by telephone. Id. On May 18, 2004, defendant filed a motion to compel plaintiff to appear in person for her deposition in Ohio. (Doc. No. 55). While this motion to compel was pending, plaintiff failed to appear in person for her deposition scheduled for June 7, 2004. On July 30, 2004, the court granted the defendant's motion to compel plaintiff's deposition, ordering plaintiff to submit to deposition in person within thirty days of the date of the order.(Doc. No. 65).

Subsequent to the court's July 30, 2004, order, defendant served plaintiff a second notice to take deposition, scheduling plaintiff's deposition for August 26, 2004. See Defendant's Motion to dismiss, Appendix B at Exhibit 1. Defendant sent a written reminder to plaintiff on August 24, 2004, that her deposition was set for August 26, 2004, but plaintiff responded, indicating her refusal to submit to a Dismiss, Appendix B at Exhibits 2 and 3. Defendant's responded to plaintiff's refusal, stating that it expected plaintiff to appear for her properly noticed deposition. Defendant's Motion to Dismiss, Appendix B at Exhibit 4. The Plaintiff did not appear for her deposition on August 26, 2004. Defendant's Motion to Dismiss, Appendix B.

B. Discussion

Defendant moves to dismiss this action pursuant to Fed. R. Civ. P. 37. Rule 37 of the federal Rules of Civil Procedure specifically authorizes the court to dismiss the action of a party who fails to appear for a properly noticed deposition. See Fed. R. Civ. P. 37.(d) and (b) (2)(c). The use of dismissal as a sanction for failing to comply with discovery has been upheld because it punishes the offending party and deters future litigants from similar misconduct. *Freeland v. Amigo*, 103 F. 3d 1271, 1277 (6th Cir. 1997).

"[T]he burden of proof is on the dismissed party to establish that 'the failure to comply [with the discovery order] was due to inability, and not to willfulness, bad faith or any fault of the party.'" Taylor v. Medtronics, 861 F. 2d 980, 987 (6th Cir. 1988) (quoting Reg'l Refuse Sys., 842 F 2d 150, 154 (6th Cir. 1988)). Defendant's motion to dismiss is unopposed. Plaintiff has offered no reason for her failure to appear twice for her scheduled depositions and refusal to comply with the court's July 30, 2004, order. Plaintiff has not met her burden of proof.

" ' If a party has the ability to comply with a discovery order and dose not, dismissal as not an abuse of discretion.'" Murray v. Target Dep't Stores, No. 01-1331, 2003 U. S. App. LEXIS 2954, at **3 (6th Cir Feb. 14, 2003) (rejecting plaintiff's argument that dismissal for failure to appear for her deposition was too harsh). Dismissal for failure to appear for a deposition also applies to pro se litigants. See e.g., Abdo-Sakher v. McCoy, No. 98-6704, 2000 U. S.App. LEXIS 26060 (6th Cir .Oct. 11, 2000) (affirming dismissal while recognizing that pro se litigants are held to a less stringent standard, but plaintiff's " total disregard for both the district court's orders and defendant's legitimate discovery requests cause undue delay in this matter")

After considering all of the allegations and the evidence, the court concludes that defendant's unopposed Motion to dismiss pursuant to Rule 37(d) should be granted.

VI. Plaintiff's Motion for Sanctions and for Protective Order

On August 26, 2004, plaintiff field a motion for sanctions and motion for protective order.(Doc. No. 70) Plaintiff, citing to Fed. R. Civ. P 37 and 26, alleges that defendants' have refused to respond to her discovery requests and that she "has every right to take deposition by telephone..." Plaintiff Motion for Sanction, P.2. Defendant filed its response in opposition to plaintiff's motion on September 16, 2004.(Doc. No. 74).

VII. Conclusion

For the foregoing reasons, defendant's motion for summary judgment and motion to dismiss are granted and plaintiff's motion for sanctions and protective order is denied. The clerk shall enter final judgment in favor of defendant on all of plaintiff's claim, dismissing plaintiff's complaint with prejudice. Costs shall be taxed against pplaintiff.

IT IS SO ORDERED

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

Date: October 25, 2004.

UNITED STATES DISTRICT COURT SOUTHERN
DISTRICT OF OHIO EASTERN DIVISION

CIVIL CASE No.2:03-cv-966

Lisha Fan, M.D.,
Plaintiff
v.

Subir Nag, M.D., et al
Defendants

(Filed January 22, 2004)

ORDER

Plaintiff's motion for summary judgment (doc. #10) is denied. Based on the affidavit of Dr. Reinhard A. Gahbauer, the court finds that there are genuine issues of material fact and that summary judgment is not appropriate.

IT IS SO ORDERED

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

Date: January 22, 2004.

UNITED STATES DISTRICT COURT SOUTHERN
DISTRICT OF OHIO EASTERN DIVISION

CIVIL CASE No.2:03-cv-966

Lisha Fan, M.D.,
Plaintiff
v.
Subir Nag, M.D., et al
Defendants

ORDER

The Clerk of Court of clerk is DIRECTED to remove the July 9, 2003 motions to appear *pro hac vice* and for extension of time to file an answer (Docs. 5, 6, and 7) from the Court's motions list as MOOT. Since this case has been transferred to the Southern District of Ohio, the motions of Wanda Carter and Christopher Hogan to appear pro hac vice in the District of Massachusetts are moot. The Motion for an extension of time to respond to the amended compliant is moot because at the preliminary pretrial conference plaintiff was granted leave to file a second amended complaint. If she dose, defendants' motion for a more definite statement will be moot.

Plaintiff Fan's August 29, 2003 motion for a jury trial (doc.16) is GRANTED.

s/ Mark R. Able
United States District Judge

(Filed January 14, 2004)

UNITED STATES DISTRICT COURT SOUTHERN
DISTRICT OF OHIO EASTERN DIVISION

CIVIL CASE No.2:03-cv-966

Lisha Fan, M.D.,
Plaintiff
v.
Subir Nag, M.D., et al
Defendants

ORDER

(Filed July 30, 2004)

Plaintiff Lisha Fan bring this action alleging that defendant The Ohio State University Medical Center intentionally exposed her to radiation while she was performing duties as a resident at the James Cancer Center and that it unlawfully terminated her residency mid-way through the fourth year. This matter is before the Court on defendants' May 18, 2004 motion for a protective order and motion to compel plaintiff's deposition (doc. 61) and Plaintiff's June 16, 2004 motion to request hearing for argument and evidence (doc. 59) and June 16, 2004 motion to extend time to file notice of appeal (doc. 60).

Defendant's May 18, 2004 motion for protective Order and Motion to compel Plaintiff's Deposition. Plaintiff has served requests for production of documents and interrogatories on Dr.Gahbauer, Dr. Bauer, Dr. Samsami, Dr. Nag, Dr. Thomas, Mr. Marsh, and other persons associated with the University Medical Center. Although some of these Persons were once defendants, the sole remaining defendant in this case is The Ohio State University Medical Center. Under Rule 33(a) and 34(a), Federal Rules of Civil Procedure, interrogatories and requests for production of documents may only be served on parties. Accordingly, defendant's motion for a protective order is GRANTED.

Defendant moves to compel Dr. Fan asks that the deposition be taken by telephone. However, defendant's counsel has right to be present when she takes Dr. Fan's deposition. Dr. Lisha Fan is ORDERED to ORDERED to submit to deposition within thirty (30) days of the date of this Order.

Plaintiff's Motion to request Hearing for Argument and Evidence. Dr. Fan complains that Court has denied her motion to recuse the trial judge and has refused to transfer this case back to the United States District Court for the District of Massachusetts. These issues have previously been fully briefed and decided by the Court. Accordingly, plaintiff's motion to request a hearing and for argument and evidence is DENIED.

Plaintiff's Motion to extend time to file notice of Appeal. Plaintiff apparently seeks leave to appeal "due to defendants[sic] have no good faith to attempt at a negotiated settlement of this matter."

No judgment has been entered, and none can be entered because the Court has not rendered a decision on the merits of all of Dr. Fan's Claims against defendant. Rule 54 (b), Federal Rules of Civil Procedure. She has claims remaining against defendant The Ohio State University Medical Center.

Accordingly, Plaintiff's June 16, 2004 Motion to

Extend time of file notice of appeal is DENIDED.

Defendant's Motion for extension of Discovery Cut-off. Defendant requests an extension of the deadline for completing all discovery from June 30, 2004 to a date that will permit it to depose Dr. Fan unjustifiably refused to submit to deposition, defendant's motion to extend the discovery deadline is GRANTED. All discovery must be completed on or before September 3, 2004.

Notice of Appeal. Plaintiff Lisha Fan filed a notice of Appeal on July 26, 2004. She did not tender the appeal filing fees. Plaintiff is ORDERED to tender to the Clerk of Court the $ 255 fee for filing a notice of appeal within thirty (30) days of the date of this Order.

IT IS SO ORDERED

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

Date: July 30, 2004.

UNITED STATES DISTRICT COURT SOUTHERN
DISTRICT OF OHIO EASTERN DIVISION

CIVIL CASE No.2:03-cv-966

Lisha Fan, M.D.,
Plaintiff
v.
Subir Nag, M.D., et al
Defendants

ORDER

(Filed June 10, 2004)

Plaintiff Lisha Fan bring this action alleging that the Ohio State University Medical Center violated Title VII of the Civil Rights Act of 1964 by creating a sexually hostile work environment, by retaliating against her, and by wrongfully terminating her. Several motions are pending before the Court:

- Plaintiff's March 3, 2004 motion to correct the docket (doc.38);
- Defendants' March 12, 2004 motion to amend/correct their answer (doc. 42);
- Plaintiff's March 23, 2004 motion to consolidate (doc.44);
- Plaintiff's May 11, 2004 motion for recusal and , in the alternatives, motion to transfer case to the United States District Court of Massachusetts (doc. 53); and,
- Defendants' May 14, 2004 motion to substitute party and change caption of action(doc. 54)

Plaintiff's motion to correct the docket. Plaintiff

Asserts that she filed a motion on February 17, 2004 by certified mail and facsimile. The docket indicates that the motion was filed on February 23, 2004. Plaintiff relies on S.D. Ohio R. 5.2 (b), which provides in pertinent part:

> Delivery by electronic means through this Court's ECF system consented to by the person served, pursuant to Rule 5(b)(2)(D). Fed. R. Civ. Pro., or By facsimile transmission between the parties or the parties' counsel, shall constitute "delivery" and proper service under Rule 5(b), Fed R. Civ. P.

S.D.Ohio R. 5.2(b)(emphasis added). Although the parties may consent to service on each other by facsimile. The Federal Rules of Civil procedure do not provide for filing by facsimile transmission. Consequently, Plaintiff's March 3, 2004 motion to correct the docket(doc.38) is DENIED.

Defendants' motion to amend/ correct their answer. Defendants' unopposed motion to amend their answer is GRANTED. Rule 15(a) of the Federal Rules of Civil Procedure provides that "a party may amend the party's pleading only leave of court or by written consent of the adverse party; and leaves shall be freely given when justice so requires."

Plaintiff's motion to consolidate. Plaintiff asks the Court to consolidate her Workers' Compensation claim with the instant case. This Court has no jurisdiction to hear or decide plaintiff's March 23, 2004 motion to consolidate (doc 44) is DENIED.

Plaintiff's Motion for recusal. 42 U.S.C.§455(a) requires a judge to recuse himself or herself "in any proceeding in which his impartiality might reasonably be questioned." The standard for recusal is an objective one," whether [a] reasonable person knowing all the surrounding circumstances, would consider the judge to be impartial." *United States v. Hurst*, 951 F. 2d 1490, 1503 (6th Cir. 1991). This standard is not based on the subjective views of the parties, no matter how strongly those subjective views are held. *United States v. Nelson*, 922 F. 2d 311 (6th Cir. 1990).

When a litigant moves to disqualify a judge for prejudice or bias, it "must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." *United States v. Grinnell Corp.*, 384 U. S. 563, 583 (1966*); Liteky v. United States,* 510 U.S.540, 555-56 (1994). Ruling or comments in a case are not a ground for recusal unless they display a deep-seated and unequivocal antagonism. *Liteky*, 510 U. S. at 555-56. Recusal is required if the judge has personal knowledge of disputed facts. Roberts v. Bailar, 625 F. 2d 125, 129 (6th Cir. 1980).

Plaintiff has failed to demonstrate her burden of showing that a reasonable person knowing all the circumstances would not consider this Court to be impartial. The Court's dismissal of plaintiff's OSHA, FMLA and state law claims is not grounds for recusal; it does not reflect deep-seated and unequivocal antagonism. In addition, plaintiff has not alleged that this Court has a personal relationship with her , the defendants, or anyone else that would impair this Court's impartiality in this case. According, plaintiff's motion for recusal for this Court is denied.

In the event that her motion for recusal was denied, plaintiff seeks to have this case transferred to the United States District Court of Massachusetts. 28 U. S. C. § 1404(a) provides:

> For the convenience of the parties and witnesses, in the interests of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

The factors to be consider under § 1404(a) are similar to those weighted by the courts in determining *forum non* convenience motions; however, transfers may be granted "upon a lesser showing of inconvenience." *Norwood v. Kirkpatrick*, 349 U. S. 29, 32 (1955). The moving party has the burden of demonstrating that the case should be transferred to a different forum. *Factors Etc., Inc V. Pro Arts, Inc.*, 579 F. 2d 215, 218 (2d Cir. 1978); *Time, Inc. v. Manning*, 366 F. 2d 690 (5th Cir. 1966); *Armco, Inc. v. Reliance National Insurance Company*, 1977 WL 311474 (S.D.Ohio W.D. may 30, 1997). A motion to transfer venue under 28 U.S.C. § 1404(a) is not intended merely to shift the burden of proceeding. Bacik v. Peek, 888 F, Supp. 1405, 1415 (N.D. Ohio 1993); AMF, Inc. v. Computer Automation, Inc. 532 F. Supp. at 1345. it "provides for transfer to a more convenient forum, not to a forum likely to prove equally convenient or inconvenient." Van Dusen v. Barrack, 376 U. S. 612, 645-46 (1994).

Plaintiff has not provided any rationale to demonstrate that United States District Court Of Massachusetts is more convenient for the litigants. Given that the conduct giving rise to this action allegedly occurred in the Southern District of Ohio, the remaining defendant is located here, and the District of Massachusetts transferred the case here because it did not have jurisdiction over defendants, there is no legal basis for a transfer. Consequently, plaintiff's May 11, 2004 motion for recusal and in the alternative, motion to transfer case to the United States District Court of Massachusetts (doc 53) is DENIED.

Defendants' motion to substitute party and change caption of action. Defendants' May 14, 2004 motion to substitute party and change caption of action (doc.54) is GRANDED. In the future, the parties should caption their pleadings, motions, and other filings to reflect that The Ohio State University Medical Center is the only remaining defendant.

IT IS SO ORDERED

s/ James L. Graham
JAMES L. GRAHAM
Chief United States District Judge

Date: June 10, 2004.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

CIVIL CASE No.2:03-cv-966

Lisha Fan, M.D.,
Plaintiff
v.
Subir Nag, M.D., et al
Defendants

MEMORANUM OPINON AND ORDER

(Filed April 30, 2004)

I. Introduction

This matter is before the court on the defendants' motion to dismiss certain claims set forth in the pro se plaintiff's second amended complaint. In the second amended complaint, plaintiff asserts that defendants [1] violated provisions of the Occupational safety and Health Act of 1970 ("OSHA"), 29 U.S.C. § 654 (A)(1),(2) by intentionally exposing her to radiation (Count I); Violated Title VII of the Civil Rights Act of 1964 ("Title VII") By creating a sexually hostile work environment, by retaliating against her, and by wrongfully terminating her (count II); and violated the Family and Medical Leave Act of 1993 ("FMLA"), 29 U.S.C.§ 2601 et seq. (Count III). Plaintiff also asserts several states law causes of action, including breach Of contract (Count IV), breach of duty of fair representation (Count V), defamation (Count VI), and a whistleblower and public policy claim (Count VII).

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[1] Plaintiff named as defendants The Ohio States University Medical Center('OSU") and the following individuals: Subir Nag, M.D., Reihard Gahbauer, M.D., Nina Samsami, PhD, Connie Bauer, M.D., Andrew Thomas, M.D., and Steven March (collectively "the individual defendants")

On February 6, 2004, Defendants fiels this motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6). In their motion to dismiss, defendants move to dismiss Count I in its entirety pursuant to Fed. R. Civ. P. 12 (b) (b). Defendants also move to dismiss Counts II and III against the individual defendants pursuant to Fed. R. Civ. P. 12 (b)(6). Finally, Defendants move to dismiss the state law claim in Conuts IV through VII against all of the defendants pursuant to Fed. R. Civ. P. 12 (b)(1).

II. Factual Background

The following facts are derived from voluminous set of documents [2] and original and amended complaints plaintiff filed with the Court. In her second amended complaint filed on January 15, 2004, Plaintiff does not include all of the facts or exhibits from her previously filed complaints on June 13, 2003 and June 17, 2003. Instead, Plaintiff incorporates those facts and exhibits by reference in her second amended complaint. Plaintiff's statement of facts is difficult to follow, sometimes unintelligible. As best as the Court can determine, the following facts appear to be the facts upon which plaintiff relies to support her claims.

Plaintiff is a former radiology student at The Ohio state University Medical Center ("OSU").

Plaintiff began her second rotation in brachytherapy [3] on April 1, 2002. Plaintiff alleged that on April 12, 2002 she worked on a patient involving this therapy. After finishing this procedure, plaintiff helped transport the

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[3] Brachytherapy is a type of advanced cancer treatment. During the treatment, a radioactive source is placed in or near the tumor to provide high levels of radiation to the tumor, but reduces exposure to surrounding healthy tissue. Another name for brachytherapy is interstitial implant.

Patient to another location.

At the time of transporting this patient, plaintiff alleges that defendant Dr. Nag told her that she did not have a license to transport the patient. Plaintiff then alleges: "I thought that [statement by Dr. Nag.] was joke, did not pay attention to it. Then we loaded radioactivity source at late evening of that day. After we completed the whole procedure. I asked Dr. Nag, if I could leave, he said 'OK'".

Plaintiff alleges that on May 1, 2002, a therapist gave her a film badge, but not a ring badge [4]. Plaintiff asked a therapist supervisor for a ring badge, and received one.

The same day, Plaintiff met with Carol Hasbrouck regarding Plaintiff's concerns about her education.

Plaintiff alleges that on May 6, 2002, she had a diagnosis of a cold nodule in the right lobe of her thyroid gland. Dr. Pozderac recommended that she wear lead protection during brachytherapy. Plaintiff alleges that "I asked Tim Nelson to get a lead neck collar for me, but I nerve [sic] got it."

Plaintiff alleges that on May 14, 2002, "we did another interstitial implant, normally, we will load radioactivity source in the same day, but I was told by Dr. Samsami 'the source need decay one more day.'" [5]
Plaintiff alleges that she went to a patient's room for brachytherpy the next day. Plaintiff alleges that the attending physician did not permit her to use lead shielding. According to Plaintiff, she previously asked for lead shielding a couple

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[4] Badges monitor radiation exposure, but do not provide protection. A film badge is for whole body, while ring badge is for the hands.

[5] The x-ray given off by the decaying radioactive sources may be used to destroy tumors.

of times, but did not receive it. Plaintiff further alleges that she did not see any attending physician or resident use lead shielding during her three years of training.

Plaintiff alleges that while in the patient's room on May 15, 2002, she attempted to keep her distance from the radiation source and reduce her time in the room. Plaintiff alleges "I tried my best to keep distance and shorter timing (but I forgot to put on my ring badge on due to the hurry) From 9:30am-10:00am, I finished loading 18 catheters. The procedure went smoothly. I was very happy about it. My attending was satisfied with my performance."

After this procedure, the attending physician asked her to work on another patient. Plaintiff did so, but alleges that she felt a warm sensation in her arms and in her upper abdomen about forty-five minutes after the brachytherapy procedure. She also felt dizzy, nauseated, and had a dry mouth, but continued working that day.

Plaintiff alleges that she went to bed that night, but still felt nauseous and had the warm sensation that she experienced earlier in the day. Later that evening she went to the emergency room. She also called her director, defendant Dr. Gahbauer, who examined her.

Early that morning, plaintiff left the emergency room. Because of her weakened condition, plaintiff asked Dr. Gahbauer and Dr. Nag if she could rest at home that day. Both agreed to her request.

May 17, 2002, Dr. Kirk examined the plaintiff and took another blood test. Dr. Kirk ordered that her film badge be read and the exposure calculated. Plaintiff also completed an accident report.

Also on May 17, 2002, plaintiff provided a note to Tim Nelson excusing her absence due to the illness. Plaintiff discussed her concerns about safety with D. Nag. In response, Dr. Nag allegedly told plaintiff that he did not wish work with her.

On May 20, 2002, Plaintiff had another blood test. The test allegedly revealed that her "lymphocyte absolute" and "Grans absolute" were dropping. Plaintiff felt weak and her family doctor, Dr. Burgin, suggested that she rest.

On May 23, 2002, Defendant Dr. Samisami called plaintiff and told her the readings from her film badge recording was for the period of May 1, 2002 to May 15, 2002. Plaintiff alleges that because she forgot to wear her ring badge on occasion, her hands may have received a higher dose.[6]

Dr. Samisami told plaintiff to speak with a safety officer. Plaintiff spoke with Bob Peterson, a safety officer, who works at OSU. Mr. Peterson told plaintiff that it was unlikely that a radiation dose caused her symptoms, but he could not be completely certain. According to plaintiff, once Dr. Gahbauer heard of Mr. Peterson's conclusion, he wanted her to talk to someone else.

Plaintiff alleges that she felt sick for three weeks. On June 17, 2002, plaintiff met Dr. Gahbauer, Dr.Bauer, and Dr. Samisami. Plaintiff alleges that the purpose of the meeting was to convince her that radiation exposure did not cause her symptoms. The doctors allegedly denied that plaintiff had any radiation exposure at all.

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[6] Specifically, plaintiff alleges: "On 5/23/02, Dr. Samisami (Medical Physicists) called and verbally reported to me that I had received 44 mrem of deep dose from film badge reading (the period was 5/1/02 to 5/15/02). Since I forgot to put on ring badge that dose, based on the inverse square law and other factors that my both hands my received 1735 mrem. And from OSU ALARA Action level I for for deep dose is 125 mrem quarterly.

On June 18, 2002, plaintiff spoke with Dr. Gahbauer. According to plaintiff, Dr. Gahbauer told her that he might not permit her to take the board Exam. Dr. Gahbauer stated that her Radiation Oncology in-training Examination result was not good. Plaintiff, however, alleges that the report he showed her was not an original.

Following this meeting with Dr. Gahbauer, Plaintiff alleges that she did not feel safe returning to work at the department. Plaintiff talked with Dr. Burgin, her family physician, who suggested that she continue to rest until she completely recovered.

Plaintiff alleges that at the end of June she talked to Dr. Andrew Thomas, assistant dean, regarding the radiation exposure and in-training exam result.

On July 1, 2002, Plaintiff met with Dr. Pariser, Chairperson of the Committee on Physician Health. Dr. Stated in a July 3, 2002 letter that he and others had concers about plaintiff's response to stress and her academic performance. Plaintiff's clinical privileges were not limited, but he referred plaintiff to Dr. Igor Janke for a psychiatric Assessment.

On July 17, 2002, Dr. Andrew Thomas, assistant Dean for Graduate medical Education at OSU, assured plaintiff in writing that her scores on the Radiation Oncology Examination were accurate.

On July 23, 2002, Dr. Gahbauer sent plaintiff a letter stating that she had not completed the required rotation in brachytherapy due to her illness from May 16, 2002 to July 1, 2002. Dr. Gahbauer further stated that he would permit plaintiff to satisfy the requirements dependent on exemplary attendance and performance in the next quarter and remaining year. He stated that he would consult with other faculty to determine if her admission to the Board examination could be supported.

Dr. Thomas sent plaintiff a letter on July 24, 2002, regarding Mr. Peterson's finding regarding the radiation exposure, including the finding that the exposure was well below limits set by the Ohio Department of Health.

On July 24, 2002, Dr. Janke met with Plaintiff and diagnosed her as having an " Occupational Proble." Plaintiff did not appear for her follow-up appointment with Dr. Janke on August 7, 2002.

On August 6, 2002, Plaintiff asked Dr. Gahbauer to approve her attendance at a review course. Plaintiff stated that Dr. Gahbauer approved two male residents to attend. Dr. Gahbauer replied that the faculty was not obligated to pay for the course.

Subsequently, plaintiff attended the conference on August 16-18, 2002. Dr. Gahbauer, however, told plaintiff on August 19, 2002 that Neuropathology told him that she was ill since August 13, 2002. He also heard that she attended the conference, but that she never requested a medical absence or informed the radiation Oncology department. Plaintiff contended, however, that she sent him a note via certified mail to alert him of her illness.

Dr. Hagop Mekhjian, Associate Vice President of Health Sciences, assured plaintiff on August 26, 2002 that she did not have any significant radiation exposure. Dr. Mekhjian also recommended that plaintiff use the appeal process if she disagreed with Dr. Gahbauer's decision regarding her rotation and vacation.

On September 3, 2002, Dr. Gahbauer Granted plaintiff's request for vacation time, but cautioned her that she would exceed the time allowed by the American Board of Radiology for residents to be away from their training program during the course of their residency. If she took the vacation she wanted, Dr. Gahbauer told her, she would need to complete additional time in her residency beyond June 30, 2003 before she would be eligible to receive her certificate.

Dr. Gahbauer also reminded her on September 3, 2002 that she still needed complete required training in brachytherpy. He also asked that she sign a release of medical Information form so that they could receive information from her treating physicians. Finally, he requested a statement from her treating physician indicating that she was ready to reassume the roles and responsibilities of a radiation Oncology resident.

Plaintiff alleges that she requested permission to attend a meeting on four separate occasions. She alleges defendants denied her request, but permitted three of her colleagues to attend. Plaintiff attended the meeting anyway on October 5, 2002 through October 10, 2002.

Plaintiff alleges that she received a suspension letter when she returned on October 11, 2002. Plaintiff also alleges that her last paycheck in October, 2002 stated that there was a sick leave adjustment to check amount.

Plaintiff also alleges that on October 30, 2002, OSU"s attorney did not permit plaintiff's attorney to speak during a hearing before the Radiation Oncology residency evaluation committee.

On November 1, 2002, Plaintiff had two interviews for radiation Oncology jobs in New York and received an offer from one that day. Plaintiff alleges that she lost that job offer because defendants later terminated her from the residency program.

Throughout November 2002, Plaintiff wrote letters to several professional boards and organizations, including the EEOC, regarding her alleged radiation exposure.

Defendants terminated plaintiff from the residency program on December 17, 2002. Plaintiff alleges that she lost two additional job offers in Kansaa and massachussetts because of her termination.

On March 31, 2003, there was a hearing before the Industrial Commission regarding plaintiff's injury claim. The District hearing officer determined that On May 15, 2002, Plaintiff sustained an injury, having been exposed to radiation while assisting during a brachytherapy procedure. The district hearing officer vacated a January 17, 2003 order denying plaintiff's claim and allowed plaintiff's claim of "neutropenia secondary to radiation exposure."

On June 13, 2002, Plaintiff filed a compliant with this Court.

III. Discussion

A. Application Standards for a motion to dismiss

1. Fed. R. Civ. P. 12(b)(1)

When a defendant raises the issue of lack of subject matter jurisdiction, the plaintiff has the burden of proving jurisdiction in order to survive the motion. *See Moir v. Greater Cleveland Reginal Transit Auth.*, 895 F. 2d 266, 269 (6th Cir. 1990)

Rule 12 (b)(1) motions for lack of subject matter jurisdiction come in two varieties. *See United States v. Ritchie,* 15 f 3d 592, 598 (6th Cir 1995); *Ohio Nat'l life Ins. Co.v. United States*, 922 F. 2d 320, 325 (6th Cir. 1990). The first variety is a facial attack on the subject matter jurisdiction alleged by the compliant, which merely questions the sufficiency of the pleading. *See Ritchie,* 15 F. 3d at 598. In a facial attack, the court takes the allegations in the complaint as true. *Id.*

The second variety is a "factual" attack, in which facts presented to the court give rise to a factual controversy regarding subject matter jurisdiction. *Id.* No presumption of truthfulness exists in a factual attack. *Id.* Instead, the district court must weight the conflicting evidence to decide whether it has jurisdiction to hear the case. *Id.*

In resolving disputed facts, the trial court has wide discretion to consider affidavits, documents, and even limited evidentiary hearings. *See Ohio Nat'l Life Ins. Co.*, 922 F. 2d at 325. Jurisdictional issues, even those hinging on factual determinations, are for the court, not a jury, to decide. *Cameron v. Children's Med. Ctr.*, 131 f. 3d 1167, 170 (6th Cir. 1997).

2. Fed. R. Civ. P. 12(b)(6)

A court may dismiss a complaint for failure to state a claim only where it appears beyond doubt that the plaintiff can prove no set facts in support of its claim which would entitle it to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

While a pro se complaint is to be liberally construed, a court may still dismiss a pro se complaint if it is "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Estelle v. gamble,* 429 U. S. 97, 106 (1976); *Brosseau v. Clermont County Comm'r*, 786 F 2d 1163 (6th Cir. 1986). Indeed, "[e]ven though a pro se [plaintiff] is held to less stringent standards than an attorney when filing pleadings, the Court still has discretion to dismiss the claim when it would appear that, however artfully pleaded, the claim would still state no grounds which would override a motion to dismiss." *Brock v. Houchin,* 779 F. 2d 49 (6th Cir 1985)

The Court must construe the compliant in a light most favorable to the plaintiff and accept as true all well-pleaded allegations in the complaint. *Cooper v. Parish,* 203 F. 3d 937, 944 (6th Cir. 2000). A court may grant a motion to dismiss under Rule 12 (b) (6) if the complaint is without merit due to an absence of law to support a claim of the type made or of facts sufficient to make a valid claim. *Rauch v. Day & Night Mfg. Corp.,* 576 F. 2d 697 (6th Cir .1978). A court may also grant a motion to dismiss where the face of the complaint reveals that there is an insurmountable bar to relief. *Id.*

A complaint must contain either direct or inferential allegations with respect to all material elements necessary to sustain a recovery under some viable legal theory. The court is not required to accept ad true unwarranted legal conclusions or factual inferences. *Morgan v. Church's Fried Chicken*, 829 F. 2d 10 (6th Cir. 1987).

However, plaintiff need not plead detailed facts or evidence in support of her claims. Fed. R. Civ. P. 8 (a) requires only "a short and plain statement of the claim" that will give the defendant fair notice of the nature of plaintiff's claims and the grounds on which those claims rest. *Conley,* 355 U.S. at 47; *E.E.O.C. v. J. H. Routh Packing Co.*, 246 F. 3d 850, 851(6th Cir. 2000).

B. Court I – OSHA

Defendants argue that Count I of the second amended complaint fails to state a claim for a private cause of action under section 654 of OSHA. That section provides:

(a) Each employer..

(1) shall furnish to each of his employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) Shall comply with occupational safety and health standards promulgated under this Act.

29 U. S. C. § 654 (a)(1)-(2).

The plaintiff alleges in paragraph 5 of the second amended complaint that the defendants breached their duty under Section 654 in the following ways:

(a) Failing to timely change personal monitor devices (film and ring badges);

(b) Failing to provide lead shielding for radiation protection that was required by JACHO[7] and NRC[8]
(c) Failing to report to NRC after the radiation exposure that occurred on May 15, 2002.
(d) Failing to report the actual exposure dose and the time period of exposure; and
(e) Failing or refusing to calculate the entire amount of radiation exposure to plaintiff's body.

Defendants argue that Sixth Circuit court of Appeals has held that OSHA does not provide for a private cause of action. See Ellis v. Chase Communications, Inc., 63 F.3d 473, 477 (6th Cir. 1995). Other than her allegations in the second amended complaint, plaintiff offers no legal authority to contradict defendants' argument.

The controlling law in this circuit is that OSHA does not provide for a private cause of action. See also Marshall v. Occupational Safety and Health Review Comm's 635 F. 2d 544, 550-51 (6th Cir. 1980) (Stating that the Sixth circuit previously "held that the Occupational Safety and Health Act does not create a private of action in favor of employees".) this Court concludes that Count I of the second amended complaint must be dismissed in its entirety.

C. Count II – Title VII

Defendants argue that Count II of the second amended Complaint fails to state a cause of action under Title VII against the individual defendants.

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[7]Plaintiff does not define what she means by "JACHO" in paragraph 5(b) of the second amended complaint. Although plaintiff refers to "JACHO," the court is not certain if plaintiff intended to write "JCAHO", which refers to the Joint Commission on Accreditation of Healthcare Organizations. JCAHO is a non-profit organization that set healthcare quality standards.

[8]Plaintiff does not define what she means by "NRC" in paragraph 5 of the second complaint. The court assumes that plaintiff is referring to the nuclear Regulatory Commission, which is an independent agent established to monitor the civilian use of nuclear materials.

The plaintiff alleges in paragraph 6 of the second amended complaint that the defendants intentionally discriminated against her by creating a sexually hostile work environment, retaliated against her because of her alleged radiation exposure, and wrongfully terminated plaintiff.

Defendants argue, citing Sixth Circuit precedent, that Title VII does not provide for individual liability. See Wathen V. Gen. Elec. Co., 115 F. 3d 400, 404-05 (6th Cir. 1997). Because there is no cause of action for individual libility, defendants conclude that Count II must be dismissed as it relates to the individual defendants.

Plaintiff, in support of her Title VII theory, cites to one FMLA case from a Nevada district court and one Title VII case from the Ninth Circuit. See Morrow V. Putnam, 142 F. Supp. 2d 1271 (D. Nev. 2001); Miller v. Maxwell's Int'l Inc., 991 F. 2d 583 (9th Cir. 1991). Morrow, a District court case from outside of this circuit, is not controlling authority. Moreover, morrow's analysis relates to the FMLA, not Title VII. The Ninth Circuit in Miller, the other case on which plaintiff relies, states that there is no individual liability under Title VII. Miller, 991 F. 2d at 587-88 (stating that the precedent determining that individual defendants cannot be held liable for damages under Title VII is good law). Thus, the Miller case actually undercuts plaintiff's arguments and supports defendants' argument that Title VII dose not provided for individual liability.

Title VII does not provide for individual libility. See. E.G., Akers V. Alvey, 338 F. 3d 491, 500 (6th Cir. 2003) (" In Wathen, this court held that despite the express use of the word 'agent' in the statute, Title VII does not creat individual liability for individual in supervisory positions such as Alvey's"); Sabouri v. Ohio Dep't of Job& Family Serv., No 01-3775, 29 Fed. Appx. 253, at *255 (6th cir Feb.1, 2002) ("[w]e conclude that the district court properly dismissed [pro se plaintiff] Saburi's Title VII claims against the individually named defendants because they cannot be held liable as defendants under Title VII.")

Because there is no cause of action for individual liability under Title VII, it is unnecessary to analyze whether plaintiff's factual allegations meet each of the elements necessary to assert a successful Title VII claim. The Court concludes that Count II of second amended complaint must be dismissed as it relates to the individual defendants.

III. Count III - FMLA

Defendants argue that Count III of plaintiff's second amended complaint fails to state a cause of action under the FMLA a it relates to the individual defendants in the public employment setting.

Defendants argue that the Sixth Circuit has ruled that there is no individual liability under FMLA in the public employment setting. See Mitchell v. Chapman, 343 F. 3d 811, 829 (6th Cir. 2003). Defendants further argue that OSU is a public employer and that the individual defendants are public employees.

In support of their argument, defendants maintain that the Ohio State University and its hospitals are instrumentalities of the State of Ohio. See, e.g., Thacker v. Bd. of Tr. Of the Ohio State Univ., 35 Ohio st. 2d 49, 51 (1973), Overruled in part on other grounds, 67 Ohio St. 31

(1981). The defendants argue that the individual defendants, employed by OSU, are thus public employees. The defendants' argument is well taken. The Ohio State University and its hospitals are instrumentalities of the state. See also Dillion v. Hosp., 715 F. Supp. 1384, 1386-87(S.D.Ohio 1989) (finding that a university hospital was a state agent and immune from plaintiff's claims); Ohio Rev. Code § 3345.011(including the Ohio State University as a "State University") the Sixth Circuit previously has determined that a State University and its hospital are divisions of the state of Ohio for Eleventh Amendment purposes.See. e.g., Thomson v. Ohio State Univ. Hosp., No. 98-3613, 2000 U.S. App. LEXIS 29206, at *3n.3 (6th Cir. 2000); Hall v. Med.College of Ohio at Toledo, 742 F. 2d 299, 301-07 (6th Cir. 1984) (finding that, under Ohio law, the Eleventh Amendment protects a state medical college as a state instrumentality or institution). In addition to ruling that they are divisions of the State, the Thomson court stated that "[i]n the Sixth Circuit, the FMLA is not actionable by private citizens in feral court against a state or its instrumentalities." Id. At *12.

Similarly, this court previously adopted the Thomson position and held that a state university was an arm of the state immune from FMLA claims:

> [T]his court hereby adopts the reasoning in Thomson and concludes that Congress did not effectively abrogate the states immunity from suit under the FMLA. It follows that the Eleventh Amendment bars this court from entertaining plaintiff's FMLA suit against defendant.

Sims v. Univ. Cincinnati, 46 F. Supp. 2d 736, 740 (S.D. Ohio.

There is no private cause of action under the FMLA against the individual defendants and OSU. The Court concludes that Count III of the second amended complaint must be dismissed as it relates to the individual defendants and to OSU.[9]

IV. Counts IV through VII- State Law Causes of Action

Defendants argue that Counts IV through VII of Plaintiff's second amended complaint must be dismissed for lack of subject matter jurisdiction. Count IV alleges that defendants breached their employment agreement with plaintiff. Count V alleges a breach of fair duty of representation, apparently because the hospital's attorney "did not allow" plaintiff's attorney to speak at a hearing on October 30, 2002. Count VI alleges a Claim of defamation, apparently based on the termination of her residency, which allegedly cause her to lose several job offers. Finally, Count VII alleges whistleblower and public pplicy torts, Based on her termination after she reported her alleged radiation exposure to various entities.

The Defendants argue that these state law claims should be dismissed because the eleventh Amendment of the Constitution bars this Court's exercise of subject matter jurisdiction over these claims. The defendants note that, with a few exceptions, the Eleventh Amendment prohibitd individuals from suing the Sates for money damages in federal court. See Kimel v. Florida Bd. of Regents, 528 U. S.

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[9] **Although the defendants moved to dismiss the FMLA claim against only the individual defendants, the cited authority also provides that OSU is immune from FMLA claims. Thus, this court must dismiss Count III against OSU as well as the individual defendants. See Quinn v. Shirey, 293 F. 3d 315, 325 n.4 (6th Cir. 2002) (dismissing claim as to moving and nonmoving parties where compliant failed to state a claim against all parties and arguments made by moving defendants were applicable to claims against nonmoving defendants).**

62 (2000); Mixon v. State, 193 F. 3d 389, 396-97 (6th Cir. 1999). Defendants further argue that the state of Ohio has not waived its Eleventh Amendment immunity from suit in federal court. Defendants conclude that Counts IV through VII against OSU should be dismissed.

The defendants also argue that Counts IV through VII should be dismissed against the individual defendants. Defendants contend that the Ohio Court of Claims Act requires plaintiff to first file her state claims against the state employees in the Ohio Court of claims. See R.C. 2743. 02 (F). In support of this argument, defendants cite to precedent from this circuit that maintains there is no jurisdiction until the Ohio Court of Claims determines the issue of immunity. See Haynes v. Marshall, 887 F. 2d 700, 705 (6th Cir. 1989); Buhrman v. Wilkinson, 257 F. Supp. 2d 1110, 1119 & n.5 (S.D Ohio 2003); Pierce v. Ohio Dep't of Rehab.and Corr., 284 F. Supp. 2d 811, 844 (N.D. Ohio 2003). Defendants assert that Counts IV through VII must be dismissed against the individual defendants, who are states officials.

Plaintiff argues that the defendants are not entitled to Eleventh Amendment immunity. In support of her argument, plaintiff cites to the dissent in Hall v. Med College of Ohio at Toledo, 742 F 2d 299, 310-311 (6th Cir. 1984) (Merritt, J., dissenting) (stating that the college and the hospital should not have Eleventh Amendment immunity) Plaintiff also argues that the claim should be dismissed because of the presence diversity jurisdiction. Defendants, however, argue that the presence of diversity jurisdiction does not defeat Eleventh Amendment immunity.

Defendants' position is correct. For the reasons stated in the discussion of the FMLA claim, OSU is entitled to Eleventh Amendment immunity in this case. See also, *United States ex rel. Diop v. Wayne County Cmty. College* Dist., 242 F. Supp. 2d 497, 526 (E. D. Mich. 2003) ("State universities and colleges almost always enjoy Eleventh Amendment Immunity.') Thus, plaintiff's state claims against OSU are barred. *See e. G., Raygor v. Regents* of the Univ. of Minn., 534 U. S. 533, 540-41 (2002) (stating that "the Eleventh Amendment. Bars the adjudication of pendent state law claims against nonconsenting defendants in federal court")

Moreover, the presence of diversity jurisdiction does not defeat Eleventh Amendment immunity, which bars suits against unconsenting stats in federal court brought by the state's own citizens or citizens of another state. *See, e.g., Nelson v. Miller*, 170 F. 3d 641, 645-46 (6th Cir. 1999); *Russell v. Clark*, No. 97-4360, 1999 U.S.App. *LEXIS* 2322, at *5 (6th Cir. Fed. 9, 1999) ("The district court properly granted the State of Ohio's motion to dismiss for failure to state a claim because the State of Ohio is immune from suit in federal court under the Eleventh Amendment.")

This Court agrees with defendants that the state claims against the individual defendants also must be dismissed. For the reasons stated above in the discussion of the FMLA claim, the individual defendants are state employees. The Ohio Court of Claims Act requires that plaintiff must first file her state law claims against the individual defendants in the Ohio Court of Claims. See R. C. 2743.02 (F); *See also Dillion v. Univ. Hosp.,* 715 F. Supp. 1384, (S. D. Ohio 1989) (stating that, under R.C. 2743. 02 , the State of Ohio "has waived its immunity and consented to be sued only in the Court of Claims. In so doing, the State of Ohio has left no reasonable construction that it has waived its Eleventh Amendment Immunity to suit in Federal Court") Thus, plaintiff has "no cause of action cognizable under

Ohio law over which the district court can assert pendent jurisdiction." Haynes v. Marshall, 887 F. 2d 700, 705 (6th Cir. 1989); see also Buhrman v. Wilkinson, 257 F. Supp. 2d 1110, 1119 & n.5(S.D.Ohio 2003).

For the reasons state above, this Court concludes that Count IV through VII of the second amended complaint must be dismissed in their entirety against all of the defendants.

V. Conclusion

Based on the foregoing analysis, Counts I and II against all of the defendants and Count II against the individual defendants are dismissed with prejudice and Count IV through VII against all of the defendants are dismissed without prejudice.

IT IS SO ORDERED

s/ James L. Graham
JAMES L. GRAHAM
Chief United States District Judge

Date: April 30, 2004.

Exhibition

(Some exhibitions are photos, diagraphs or tables which are reduced in size to fit in this size of paper per instruction from Mr. Clayton R. Higgins, Jr)

App-E1

(a)

Fan

2000	July-Sept.	Subir Nag, M.D.	Brachytherapy	Satisfactory
2000	Oct.-Dec.	Reinhard A. Gahbauer, M.D.	Clinical Rad Onc	Satisfactory
2001	Jan-March	Martin Ribovich, M.D.	Clinical Rad Onc	Satisfactory
2001	April	Mike Stanek M.D.	Medical Onc.	Satisfactory
2001	May-June	Dr. Bova	Diagnostic Radiology	Satisfactory
2001	July-Sept	John Grecula, M.D.,	Clinical Rad. Onc	Satisfactory
2001	Oct-Dec.	Reinhard A. Gahbauer, M.D.	Clinical Rad Onc	Satisfactory
2002	Jan-March	Constance Bauer, M.D.	Clinical Rad Onc	
2002	Ap- June	Subir Nag, M.D.	Bractherapy	

(b)

Division of Radiation Oncology: Resident Evaluation-Outside Rotation

PGY level: 5

Resident's Name Lisha Fan

Date 9/30/02

Circle the number corresponding to you response

Competencies	Superior	Excellent	Good	Fair	Poor
Patient Care					
Caring and respectful Behaviors	[✓ 5]	4	3	2	1
"Bedside manner"	[✓ 5]	4	3	2	1

Informed decision Making	[✓ 5]	4	3	2	1
Development & Implementation of Patient management Plans	[✓ 5]	4	3	2	1
Performance of Procedures: Routine Physical exam	[✓ 5]	4	3	2	1
Performance of Procedures	[✓ 5]	4	3	2	1
Teamwork	[✓ 5]	4	3	2	1
Medical Knowledge					
Knowledge of Pertinent literature	[✓ 5]	4	3	2	1
Investigative & Analytic thinking	[✓ 5]	4	3	2	1
Knowledge and application of basic sciences	[✓ 5]	4	3	2	1
Practice-based learning & Improvement					
Capacity for self-analysis And self-criticism	[✓ 5]	4	3	2	1
Use of evidence from Scientific studies	[✓ 5]	4	3	2	1
Application of research And statistical methods	[✓ 5]	4	3	2	1
Use of information Technology	[✓ 5]	4	3	2	1
Facilitation of learning Of others	[✓ 5]	4	3	2	1
Interpersonal & Communication Skills					
Communication of Therapeutic plan to Patients	[✓ 5]	4	3	2	1
Listening skills	[✓ 5]	4	3	2	1
Professionalism					

Respectful	[✓ 5]	4	3	2	1
Altruistic	[✓ 5]	4	3	2	1
Ethical	[✓ 5]	4	3	2	1
Sensitive to cultural Differences, age, gender, And disabilities	[✓ 5]	4	3	2	1
Discharge of Clinical Responsibilities					
Attendance at Conferences	[✓ 5]	4	3	2	1
Completion of assigned Duties	[✓ 5]	4	3	2	1
Completion of medical Record	[✓ 5]	4	3	2	1

Comments (strengths, weaknesses, and recommendations)

Dongwoo John Chang/Neurosurgery Date 10/2/02
Staff (print) Service
s/Dongwoo John Chang
Staff signature

This evaluation was discussed and reviewed with the resident on date______

______________________ s/Lisha Fan
Program Director Residend signature

Resident signature does not necessarily indicate agreement with the evaluation. Reason for disagreement should be submitted to the Faculty and the director.

Date__________________ Date ______________

(c)

Division of Radiation Oncology: Resident Evaluation-Outside Rotation PGY level: 5

Resident's Name Lisha Fan Date 9/30/02

Circle the number corresponding to you response

Competencies	Superior	Excellent	Good	Fair	Poor
Patient Care NA					

Caring and respectful Behaviors	5	4	3	2	1
"Bedside manner"	5	4	3	2	1
Informed decision Making	5	4	3	2	1
Development & Implementation of Patient management Plans	5	4	3	2	1
Performance of Procedures: Routine Physical exam	5	4	3	2	1
Performance of Procedures	5	4	3	2	1
Teamwork	5	4	3	2	1
Medical Knowledge					
Knowledge of Pertinent literature	5	4	[✓ 3]	2	1
Investigative & Analytic thinking	5	[✓ 4]	3	2	1
Knowledge and application of basic sciences	5	4	[✓ 3]	2	1
Practice-based learning & Improvement			NA		
Capacity for self-analysis And self-criticism	5	4	3	2	1
Use of evidence from Scientific studies	5	4	3		
Application of research And statistical methods	5	4	3	2	1
Use of information Technology	5	4	3	2	1
Facilitation of learning Of others	5	4	3	2	1
Interpersonal & Communication Skills					
Communication of Therapeutic plan to					

Patients	5	4	3	2	1
Listening skills	5	4	[✓ 3]	2	1
Professionalism					
Respectful	5	4	[✓ 3]	2	1
Altruistic don't know	5	4	3	2	1
Ethical don't know	5	4	3	2	1
Sensitive to cultural Differences, age, gender, And disabilities	5	4	[✓ 3]	2	1
Discharge of Clinical Responsibilities					
Attendance at Conferences	5	4	3	[✓ 2]	1
Completion of assigned Duties	5	4	3	2	1
Completion of medical Record	5	4	3	2	1

Comments (strengths, weaknesses, and recommendations)

Abhik Ray Chaudhury/Neurooathology Date 9/30/02
Staff (print) Service
s/Abhik Ray Chaudhury
Staff signature

This evaluation was discussed and reviewed with the resident on, Date9/30/02

______________________ s/Lisha Fan
Program Director Residend signature

Resident signature does not necessarily indicate agreement with the evaluation. Reason for disagreement should be submitted to the Faculty and the director.

Date__________________ Date 9/30/02

(d)

Arthur G. James Cancer Hospital
And Richard J. Solove Research Institute Division of Radiation Oncology
RESIDENT EVALUATION

Resident: Lisha Fan Date: 6/6/01

To be completed by Faculty. For each category, rank the resident using 1.0 (outstanding) to 5.0 (unsatisfactory). Decimals to one place may be used.

Category	**Score**
A. General medical knowledge	1
B. Knowledge of pertinent literature	1
C. Discharge of clinical responsibilities	1
Attendance at conferences	1
Completion of assigned duties	1
Completion of medical record	1
D. Level of knowledge of patients on service	1
E. Relationship with:	
Patients	1
Medical Staff	1
F. Effectiveness in integrating team approach With other clinical services	1

COMMENTS (on strengths, weaknesses and recommendations)

Dr. Stanek/ Hem-Onc
Staff(print) service
s/M.Stanek
(Staff signature)

This evaluation was discussed and reviewed with the resident on date_____

Program Director

Residend signature

Resident signature does not necessarily indicate agreement with the evaluation. Reason for disagreement should be submitted to the Faculty and the director.

App-E2
(a)

THE AMERICAN BOARD OF RADIOLOGY
5441 East Williams Blvd., Suite 200
Tucson, AZ 85711

Telephone: (520)790-2900
Fax: (520) 790-3200

Radiation Oncology Exam

48122
Lisha Fan, MD
6626 Egg Ct, Apt. A
Dublin, OH 43017

Dear Doctor Fan:

This is your definitive appointment for the written examination. Please note that you must keep the top portion of this form to present to the Chief Proctor.
Without it you cannot be admitted to the examination.
The bottom portion must be signed and returned before
7/17/02
You are instructed to bring with you two #2 black lead pencils with good erasers. Although the form of the questions will be such that a calculator os unnecessary, candidates will be permitted to use calculators provided by the Board. These will be either Radio Shack #65-822 of Casio fx-280.NO OTHER EQUIPMENT WILL BE PERMITTED.

City: Deerfield, IL
Place: American Board of Psychiatry and Neurology
500 Lake Cook Road
Third Floor

Book	**Date**	**Time**
Biology	Thursday, September 12, 2002	1:00pm
Physics	Friday, September 13, 2002	7:30am
Clinical	Friday, September 13, 2002	1:00pm

Sign, detach and return lower portion postmarked by July 17, 2002

CANCELLATION FEE: Before August 23, 2002 $200
After August 23, 2002 $1800

(b)

THE AMERICAN BOARD OF RADIOLOGY
Diagnostic Radiology Radiation Oncology Radiologic Physics
Robert R. Hattery, M.D., Executive Director

April 2, 2003

Lisha Fan, MD
17 Jackson Street
Newton, MA 02459

Dear Dr. Fan:

This letter confirms my conversation with you this morning.

You did sit for the written portion of the radiation oncology certification exam in September. However, since you have only had 41.5 months of the required 48 months of training in radiation oncology, you can neither continue in the examination process nor be certified in radiation oncology until you have the additional 6.5 months training in an ACGME approved program in radiation oncology.

Further, you do not need the Board's permission to seek employment. That is a matter between you and a potential employer.

Sincerely yours,

S/ L. W. Davis, MD
Lawrence W. Davis, MD
Assistant Executive Director
Radiation Oncology

LWD:pam

(c)

Arthur G. James Cancer Hospital
And Richard J. Solove Research Institute Division of
Radiation Oncology

8/6/02

Dear Dr. Gahbauer:

RE: Equal opportunity of Education

I have been invited to participate a review course in Radiobiology at UofL Health science Center.The dates for the review course are

Friday, Aug. 16, 2002, 1:00pm-7:00pm
Saturday, Aug. 17, 2002, 8:00am-5:00pm
Sunday, Aug. 18, 2002, 8:00am-12:00pm

I have been told by Dr. Tippin, that you have approved Doug Tippin and Sherif Yacoub go to the Class.

I would like to have an equal opportunity of the Education.

Thank you !

Sincerely,
Lisha Fan, MD

(d)

Lisha Fan-Re: Biology course
From: Reinhard Gahbauer
To: Fan, Lisha
Date: 8/6/02 4:51pm
Subject: Re: Biology course

The facts are simple: 1) I offered you the course by asking Dr. Tippin to tell you about it. I would have expected a more gracious reception of that offer. In principle, our faculty need not pay for it. It is a tremendous benefit.2) While you were out, your associates covered and had less time to study for the boards-I appreciated that. When you came back, you did not thank them for it, but argued about dictations and other things.

>>> Lisha Fan 08/06/02 03:28pm>>>

Dear Dr. Gahbauer:

Re: Radiobiology Course

The letter that I sent to you this morning was,"I have been invited to participate a review course in Radiobiology at UofL Health science Center. I have been told by Dr. Tippin, that you have approved Doug Tippin and Sherif Yacoub go to the Class. I would like to have an equal opportunity of the Education."

Doug Tippin is a chief resident, I have to believe him, that what he said to me. I am doing outside rotation(7/1 to 9/30/02), which you approved it and it is on ourresident's rotation schedule.

I did not quite understood that you said "your colleagues also may deserve a thank you for covering while you were out."

Sincerely

Lisha Fan

>>> Reinhard Gahbauer 08/06/02 11:04am>>>

Dear lisha,

I am surprised by your letter. You have been informed about this course by Dr.Tippin at my request. IO find it unusual that you respond to that by a letter: Re: Equal opportunity of Education.

May I point out that this course support is beyond our obligations and offered as a courtesy. If our attendings support this, I think a note of thanks would be more appropriate. In the context, your colleagues also may deserve a thank you for covering while you were out.

R. Gahbauer

App-E3

Fan, Lisha Sex:F BD:04/11/1957 MR#:907572960

Emergency Report **May 16, 2002 00:00**

Boggs, Leo

***** PRELIMINARY REPORT *****

ROOM #: ED

EMERGENCY ROOM REPORT

DATE: 05/16/2002

NAME: Fan, Lisha

MR#: 907-57-2960

ATTENDING PHYSICIAN: Leo Boggs, MD
DOB: 04/11/1957

CHIEF COMPLAINT

Nausea, vomiting and dizziness.

HISTORY OF PRESENT ILLNESS

This is a 45-year-old Asian-American female who is a radiation oncology resident who states today she was inserting radiation to three different patient. She states that she began having a warm sensation in her arms and chest. The pain went up into her arms and now it is just an odd sensation in her muscles, but not in her joints. She did not describe the chest discomfort as pain so much and she just said a warm sensation. She began feeling dizzy around noon as well and still feels a bit light-headed and has been nauseated with no appetite. Right now she says that she is significantly chilled, but has not had any fevers lately. Otherwise she says she has been feeling well. She has had no fevers, chills, vomiting, constipation or diarrhea.

PAST MEDICAL HISTORY

Significant for thyroid disorder. She recently had a scan which showed a cold nodule and she is scheduled for a repeat scan later. Past surgical history - None. She is on no medications. She is allergic to penicillin and Sulfa.

SOCIAL HISTORY

She is a radiation oncology fellow here at The Ohio State University.

REVIEW OF SYSTEMS

She says her last menstrual period was a month ago. She denies that she can be pregnant. She has had no dysuria, frequency or urgency. She denies any sore throat, difficulty breathing or other complaints.

PHYSICAL EXAMINATION

Reveals a well-developed, well-nourished, Asian female in no distress. Temperature is 97.0, blood pressure 108/70, pulse is 70, respirations 14. HEENT - Normocephalic, atraumatic. Pupils equal, round and reactive to

App-E3

mouth was dry

light. Extraocular muscles are intact. Moist mucous membranes. Neck is supple. Heart shows a regular rate and rhythm without murmur. Lungs are clear bilaterally without wheezes, rales or rhonchi. Abdomen - Bowel sounds are positive, soft, nontender, nondistended. Extremities show no cyanosis, clubbing or edema. Neurologic - She is alert and oriented [illegible] four. Cranial nerves II-XII intact. Muscle strength is bilaterally equal.

EMERGENCY DEPARTMENT COURSE

192 Ir

The patient was seen by myself as well as the attending physician who supervised all of her care. The radiation oncology attending came down and discussed the amount of radiation that she had been exposed to and stated, that it could not be more than a very small amount of Iron at 19[illegible]. He said that the most it would do was decrease her lymphocyte count and he said they would follow this as an outpatient. Subsequently, a CBC was checked. Her white blood cell count was 6.0, hemoglobin 13.0, hematocrit was 37.8, platelets 288. She had 54% granulocytes and 28% lymphocytes. The patient was subsequently discharged to home. ________________. She should follow up for recheck in a day. She is to return if further concerns. She is to drink plenty of fluids. Take Tylenol as needed for pain.

FINAL DIAGNOSIS

Radiation exposure.

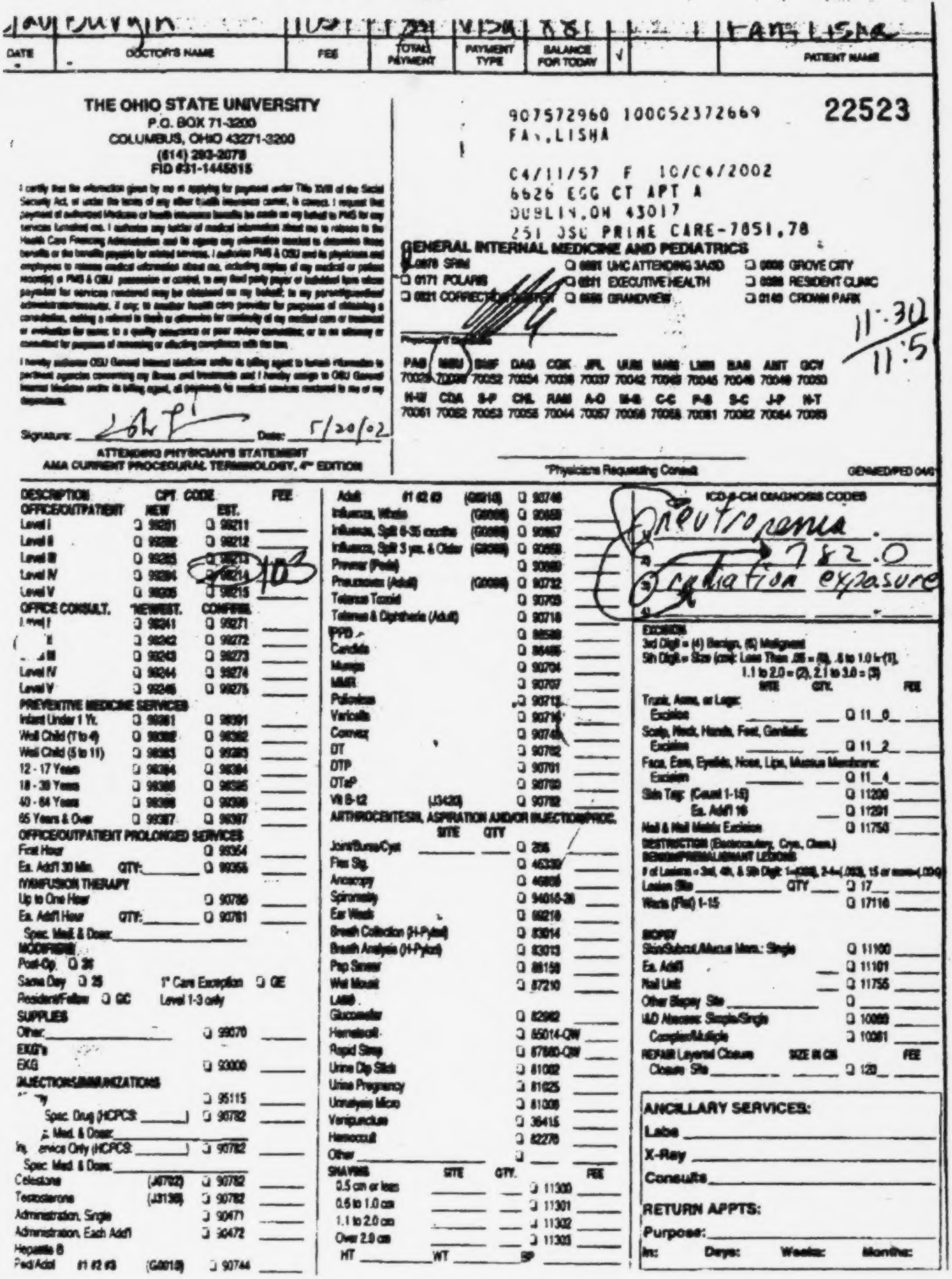
Dictated By: Kimberly D Cordes, MD

Unreviewed

Leo Boggs, MD
ATTENDING PHYSICIAN

KC:tre D:05/16/2002 T:05/16/2002 10:16 A JOB:001798424 DOC:1275054
cc:

App-E3



DATE	DOCTOR'S NAME	FEE	TOTAL PAYMENT	PAYMENT TYPE	BALANCE FOR TODAY	√		PATIENT NAME
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]			FAN LISHA

THE OHIO STATE UNIVERSITY
P.O. BOX 71-3200
COLUMBUS, OHIO 43271-3200
(614) 293-2078
FID #31-1445815

I certify that the information given by me in applying for payment under Title XVIII of the Social Security Act, or under the terms of any other health insurance carrier, is correct. I request that payment of authorized Medicare or health insurance benefits be made on my behalf to PMS for any services furnished me. I authorize any holder of medical information about me to release to the Health Care Financing Administration and its agents any information needed to determine these benefits or the benefits payable for related services. I authorize PMS & OSU and its physicians and employees to release medical information about me, including copies of any medical or patient record(s) in PMS & OSU possession or control, to any third party payer or individual from whom payment for services rendered may be obtained on my behalf; to my parent/guardian/administrator/executor, if any; to another health care provider for purposes of obtaining a consultation, making a referral to them or otherwise for continuity of my medical care or treatment or evaluation for same; to a quality assurance or peer review committee; or to an attorney or consultant for purposes of assessing or effecting compliance with the law.

I hereby authorize OSU General Internal Medicine and/or its billing agent to furnish information to pertinent agencies concerning my illness and treatments and I hereby assign to OSU General Internal Medicine and/or its billing agent, all payments for medical services rendered to me or my dependents.

Signature: ______________ Date: 5/20/02

ATTENDING PHYSICIAN'S STATEMENT
AMA CURRENT PROCEDURAL TERMINOLOGY, 4th EDITION

907572960 100052372669
FA\,LISHA

C4/11/57 F 10/C4/2002
6626 ESG CT APT A
DUBLIN,OH 43017
251 OSU PRIME CARE-7851,78

22523

GENERAL INTERNAL MEDICINE AND PEDIATRICS

- ☑ 0070 SRM
- ☐ 0171 POLARIS
- ☐ 0021 CORRECTION CENTER
- ☐ 0001 UHC ATTENDING 3A5D
- ☐ 0031 EXECUTIVE HEALTH
- ☐ 0066 GRANDVIEW
- ☐ 0006 GROVE CITY
- ☐ 0098 RESIDENT CLINIC
- ☐ 0140 CROWN PARK

11:30
11:5

Physician's Signature

PAS 70029	[✓ MBU 70030]	BMF 70052	DAG 70034	CGK 70036	JFL 70037	UUB 70042	MAB 70043	LMH 70045	BAS 70046	AMT 70049	GCV 70050
H-W 70051	CDA 70052	S-P 70053	CHL 70055	RAM 70044	A-O 70057	M-B 70058	C-C 70058	P-S 70061	S-C 70062	J-P 70064	H-T 70065

*Physicians Requesting Consult

GENMED/PED 04

DESCRIPTION	CPT CODE NEW	EST.	FEE
OFFICE/OUTPATIENT			
Level I	☐ 99201	☐ 99211	
Level II	☐ 99202	☐ 99212	
Level III	☐ 99203	☐ 99213	
Level IV	☐ 99204	☑ 99214	103
Level V	☐ 99205	☐ 99215	
OFFICE CONSULT.	*NEW/EST.	CONF/FEE	
Level I	☐ 99241	☐ 99271	
Level II	☐ 99242	☐ 99272	
Level III	☐ 99243	☐ 99273	
Level IV	☐ 99244	☐ 99274	
Level V	☐ 99245	☐ 99275	
PREVENTIVE MEDICINE SERVICES			
Infant Under 1 Yr.	☐ 99381	☐ 99391	
Well Child (1 to 4)	☐ 99382	☐ 99392	
Well Child (5 to 11)	☐ 99383	☐ 99393	
12 - 17 Years	☐ 99384	☐ 99394	
18 - 39 Years	☐ 99385	☐ 99395	
40 - 64 Years	☐ 99386	☐ 99396	
65 Years & Over	☐ 99387	☐ 99397	
OFFICE/OUTPATIENT PROLONGED SERVICES			
First Hour		☐ 99354	
Ea. Add'l 30 Min. QTY:______		☐ 99355	
IV/INFUSION THERAPY			
Up to One Hour		☐ 90780	
Ea. Add'l Hour QTY:______		☐ 90781	
Spec. Med. & Dose:______			
MODIFIERS			
Post-Op. ☐ 24			
Same Day ☐ 25	1° Care Exception	☐ GE	
Resident/Fellow ☐ GC	Level 1-3 only		
SUPPLIES			
Other:______		☐ 99070	
EKG's			
EKG		☐ 93000	
INJECTIONS/IMMUNIZATIONS			
Allergy		☐ 95115	
Spec. Drug (HCPCS: ______)		☐ 90782	
Spec. Med. & Dose:______			
Inj. Service Only (HCPCS: ______)		☐ 90782	
Spec. Med. & Dose:______			
Celestone	(J0702)	☐ 90782	
Testosterone	(J3130)	☐ 90782	
Administration, Single		☐ 90471	
Administration, Each Add'l		☐ 90472	
Hepatitis B			
Ped/Adol #1 #2 #3	(G0010)	☐ 90744	

DESCRIPTION		CODE	FEE
Adult #1 #2 #3	(G0010)	☐ 90746	
Influenza, Whole	(G0008)	☐ 90659	
Influenza, Split 6-35 months	(G0008)	☐ 90657	
Influenza, Split 3 yrs. & Older	(G0008)	☐ 90658	
Prevnar (Peds)		☐ 90669	
Pneumovax (Adult)	(G0009)	☐ 90732	
Tetanus Toxoid		☐ 90703	
Tetanus & Diphtheria (Adult)		☐ 90718	
PPD		☐ 86580	
Candida		☐ 86485	
Mumps		☐ 90704	
MMR		☐ 90707	
Poliovirus		☐ 90713	
Varicella		☐ 90716	
Comvax		☐ 90748	
DT		☐ 90702	
DTP		☐ 90701	
DTaP		☐ 90700	
Vit B-12	(J3420)	☐ 90782	
ARTHROCENTESIS, ASPIRATION AND/OR INJECTIONS/PROC.	SITE / QTY		
Joint/Bursa/Cyst	______ ______	☐ 206	
Flex Sig.		☐ 45330	
Anoscopy		☐ 46600	
Spirometry		☐ 94010-20	
Ear Wash		☐ 69210	
Breath Collection (H-Pylori)		☐ 83014	
Breath Analysis (H-Pylori)		☐ 83013	
Pap Smear		☐ 88150	
Wet Mount		☐ 87210	
LABS			
Glucometer		☐ 82962	
Hematocrit		☐ 85014-QW	
Rapid Strep		☐ 87880-QW	
Urine Dip Stick		☐ 81002	
Urine Pregnancy		☐ 81025	
Urinalysis Micro		☐ 81005	
Venipuncture		☐ 36415	
Hemoccult		☐ 82270	
Other______		☐ ____	

SHAVINGS	SITE	QTY.		FEE
0.5 cm or less			☐ 11300	
0.6 to 1.0 cm			☐ 11301	
1.1 to 2.0 cm			☐ 11302	
Over 2.0 cm			☐ 11303	

HT ______ WT ______ BP ______

ICD-9-CM DIAGNOSIS CODES

1) neutropenia ___ . ___
2) 782.0
3) radiation exposure
4) ___ . ___

EXCISION
3rd Digit = (4) Benign, (6) Malignant
5th Digit = Size (cm): Less Than .05 = (0), .6 to 1.0 = (1), 1.1 to 2.0 = (2), 2.1 to 3.0 = (3)

	SITE	QTY.		FEE
Trunk, Arms, or Legs: Excision			☐ 11_0_	
Scalp, Neck, Hands, Feet, Genitalia: Excision			☐ 11_2_	
Face, Ears, Eyelids, Nose, Lips, Mucous Membrane: Excision			☐ 11_4_	
Skin Tags (Count 1-15)			☐ 11200	
Ea. Add'l 16			☐ 11201	
Nail & Nail Matrix Excision			☐ 11750	

DESTRUCTION (Electrocautery, Cryo, Chem.)
BENIGN/PREMALIGNANT LESIONS
# of Lesions = 3rd, 4th, & 5th Digit: 1=(000), 2-4=(.003), 15 or more=(.004)

Lesion Site ______ QTY ____		☐ 17__	
Warts (Flat) 1-15		☐ 17110	
BIOPSY			
Skin/Subcut/Mucous Mem.: Single		☐ 11100	
Ea. Add'l	____	☐ 11101	
Nail Unit	____	☐ 11755	
Other Biopsy Site ______		☐ ____	
I&D Abscess: Simple/Single		☐ 10060	
Complex/Multiple		☐ 10061	
REPAIR Layered Closure	SIZE IN CM		FEE
Closure Site ______	______	☐ 120_	

ANCILLARY SERVICES:
Labs ______
X-Ray ______
Consults ______

RETURN APPTS:
Purpose: ______
In: Days: Weeks: Months:

App-E3

The examination and treatment which you have received, has been on an emergency basis only. It is not intended to be a substitute or replacement for complete care from your family physician. If you have further problems or questions, you may return here, or call the appropriate Emergency Department at: University Hospitals (293-8333) or University Hospitals East (257-3414).

PHYSICIAN DISCHARGE INSTRUCTIONS

You were seen by Dr. Cordes / Boggs **For** radiation exposure

Printed Instructions: Your lymphocyte count was normal.
Follow up for a recheck (repeat lymphocyte count) in 3-4 days
Return for further concerns
plenty of fluids

Prescriptions Given: (Fill and take as directed by physician) ______

Physician Referral: ☐ Return to ED ☒ Follow up with: your program doctor for recheck radiation

Activity Level: ☐ Resume normal activity ☐ Bedrest ☐ Limitations: ______

Work/School Excuse: ______ **day(s)**

All EKG and x-ray interpretations made by the emergency physician are subject to review by a radiologist and/or cardiologist. All culture results are reviewed. You or your physician will be contracted if any additional information is noted.

INSTRUCTION SHEETS GIVEN

☐ Crutch Walking
☐ Gastroenteritis
☐ Head Injury Sheet
☐ Medication ______
☐ Injured Ankle
☐ Sexually Transmitted Diseases
☐ Suture Care
☐ Diphtheria Tetanus Information
☐ Urinary Tract Infection
☐ Others ______

Return Satisfactory Demonstration:
☐ Crutch Walking
☐ Dressing Change
☐ Other

Verbalized Understanding of Instructions and referral:
☒ Patient
☐ Parent
☐ Family
☐ Other
☐ Significant Other

Mode of Discharge:
☒ Ambulatory
☐ Ambulatory with assistance
☐ Wheelchair
☐ Ambulance

PATIENT SIGNATURE	DATE 5/10/02	TIME 1200
INSTRUCTED BY [illegible]		

ALL ENTRIES WILL BE SIGNED BY A LICENSED, REGISTERED, OR CERTIFIED MEMBER OF THE STAFF

THE OHIO STATE UNIVERSITY MEDICAL CENTER
☐ UNIVERSITY HOSPITALS
☐ UNIVERSITY HOSPITALS EAST
☐ ARTHUR G. JAMES CANCER HOSPITAL AND RICHARD J. SOLOVE RESEARCH INSTITUTE

DISCHARGE INSTRUCTIONS FOR FOLLOW-UP CARE

MC040933 (8/01) WHITE: MEDICAL RECORD CANARY: PATIENT COPY PINK: EMERGENCY DEPARTMENT

EMERGENCY DEPARTMENT

572960 303693998
.LISHA U
05 15 02 F 04 11 1957
. CRAIG B 45

App-E4

Fan, Lisha Sex:F BD:04/11/1957 MR#:907572960

Hematology, CBC (Up to 5 latest results)

All Graph	2002 20 May 09:46 M68831	2002 17 May 16:29 F34152	2002 16 May 00:32 H75705	2002 15 Mar 17:44 F79301	2001 28 Sep 16:13 F67178
☐ WBC (4-10) K/uL	4.2	7.1	6.6	6.0	6.3
☐ RBC (4.20-5.40) M/uL	4.81 √	4.76	4.33	4.42	4.60
☐ Hgb (12-16) g/dL	14.0	14.1	13.0	13.7	14.0
☐ Hct (37.0-47.0) %	42.8	42.0	37.8	39.3	40.6
☐ Mean Cell Volume (82.0-98.0) fL	89.1	88.3	87.2	88.8	88.1
☐ Mean Cell Hgb Concentration (32-36) g/dL	32.8	33.5	34.5	34.9	34.5
☐ RBC Distribution (11.5-14.5)	12.2	12.4	12.5	12.7	12.5
☐ Platelet Count (150-400) K/uL	309		288	292	298
☐ Mean Platelet Volume (8.2-10.6) fL	6.3		6.5	6.8	7.2

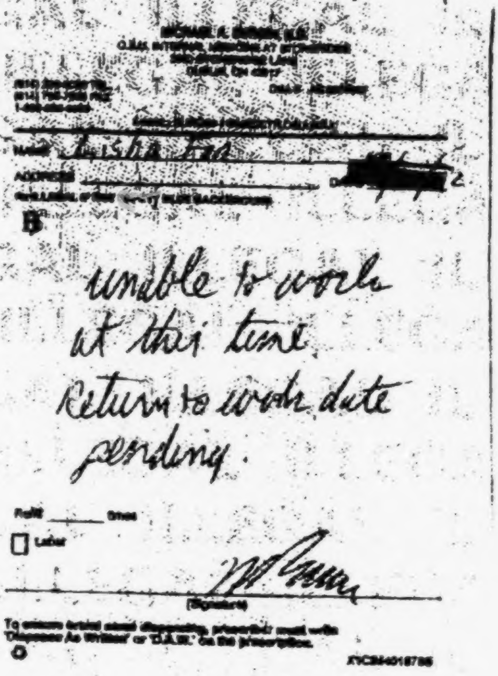
Hematology, Electronic Diff (Up to 5 latest results)

All Graph	2002 20 May 09:46 M68831	2002 17 May 16:29 F34152	2002 16 May 00:32 H75705	2002 15 Mar 17:44 F79301	2001 28 Sep 16:13 F67178
☐ Grans, Electronic (40.5-75.0) %	65.1	73.0 H	64.9	62.2	60.1
☐ Lymphs, Electronic (20.0-40.0) %	28.3	21.0	28.5	30.3	32.1
☐ Monocytes, Electronic (0.0-12.0) %	4.8	5.0	5.0	5.9	5.1
☐ Eosinophils, Electronic (0.0-6.0) %	1.0	0.5	1.2	1.2	2.0
☐ Basophils, Electronic (0.0-2.0) %	0.8	0.5	0.4	0.4	0.7
☐ Grans, Absolute (1.8-7.8) K/uL	2.8	5.2	4.3	3.7	3.6
☐ Monos, Absolute (0.0-1.2) K/uL	0.2	0.4	0.3	0.4	0.3
☐ Lymphs, Absolute (1.3-4.0) K/uL	1.2 L	1.5	1.9	1.6	2.0
☐ Eos, Absolute (0.0-0.4) K/uL	0.0	0.0	0.1	0.1	0.1
☐ Baso, Absolute (0.0-0.2) K/uL	0.0	0.0	0.0	0.0	0.0

Hematology, Special & Iron Metab (Up to 5 latest results)

All Graph	2002 15 Mar 17:44 F79301	2001 28 Sep 16:13 F67178
☐ ESR, Westergren (0-20) mm/hr	4	

Page created: Monday, May 20, 2002 6:13 PM For: FAN01



[illegible]

[illegible]

[illegible]

NAME Lisha Fan

ADDRESS DATE [redacted]2

℞

unable to work at this time. Return to work date pending.

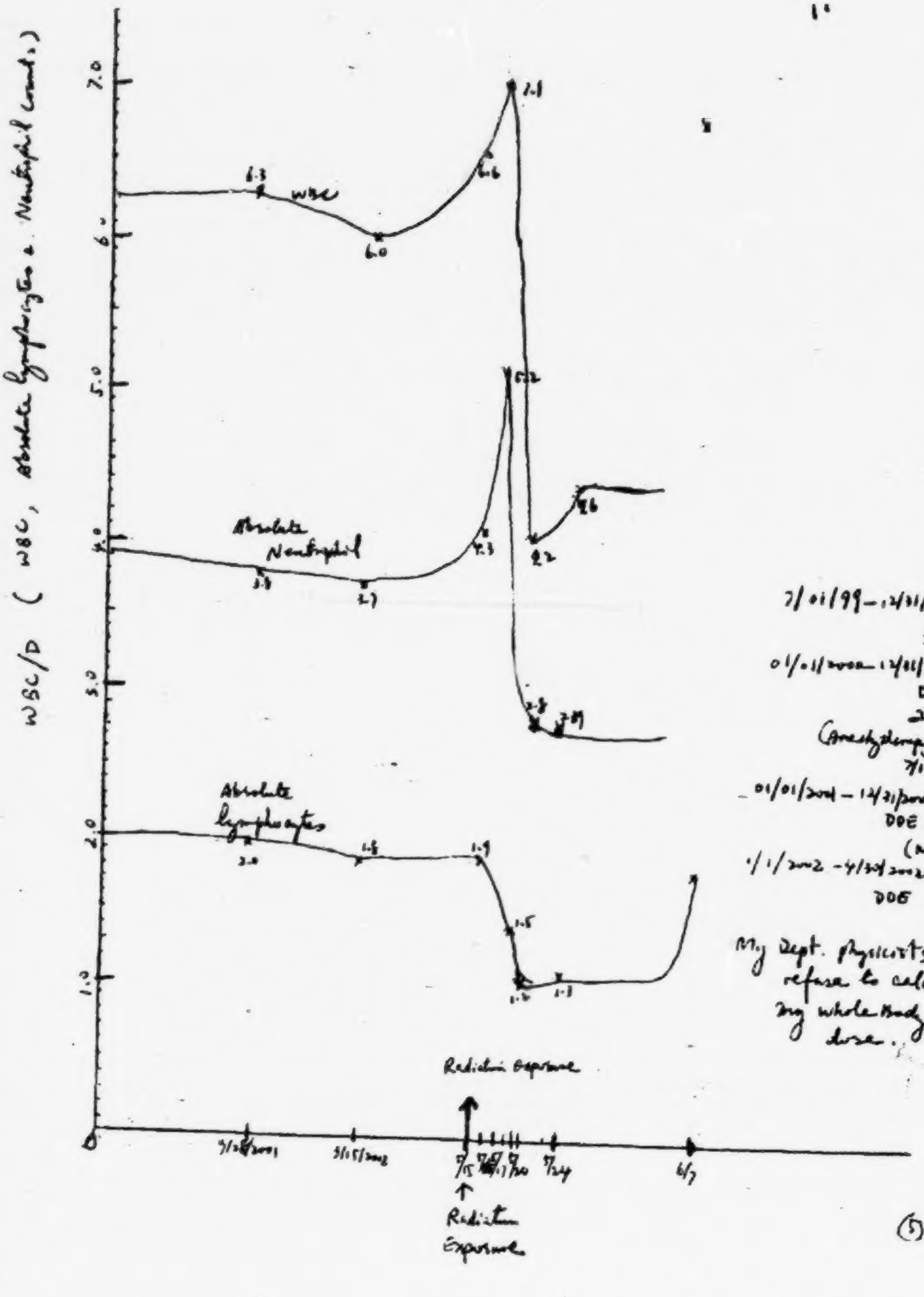
Refill ______ times

☐ Label

(Signature)

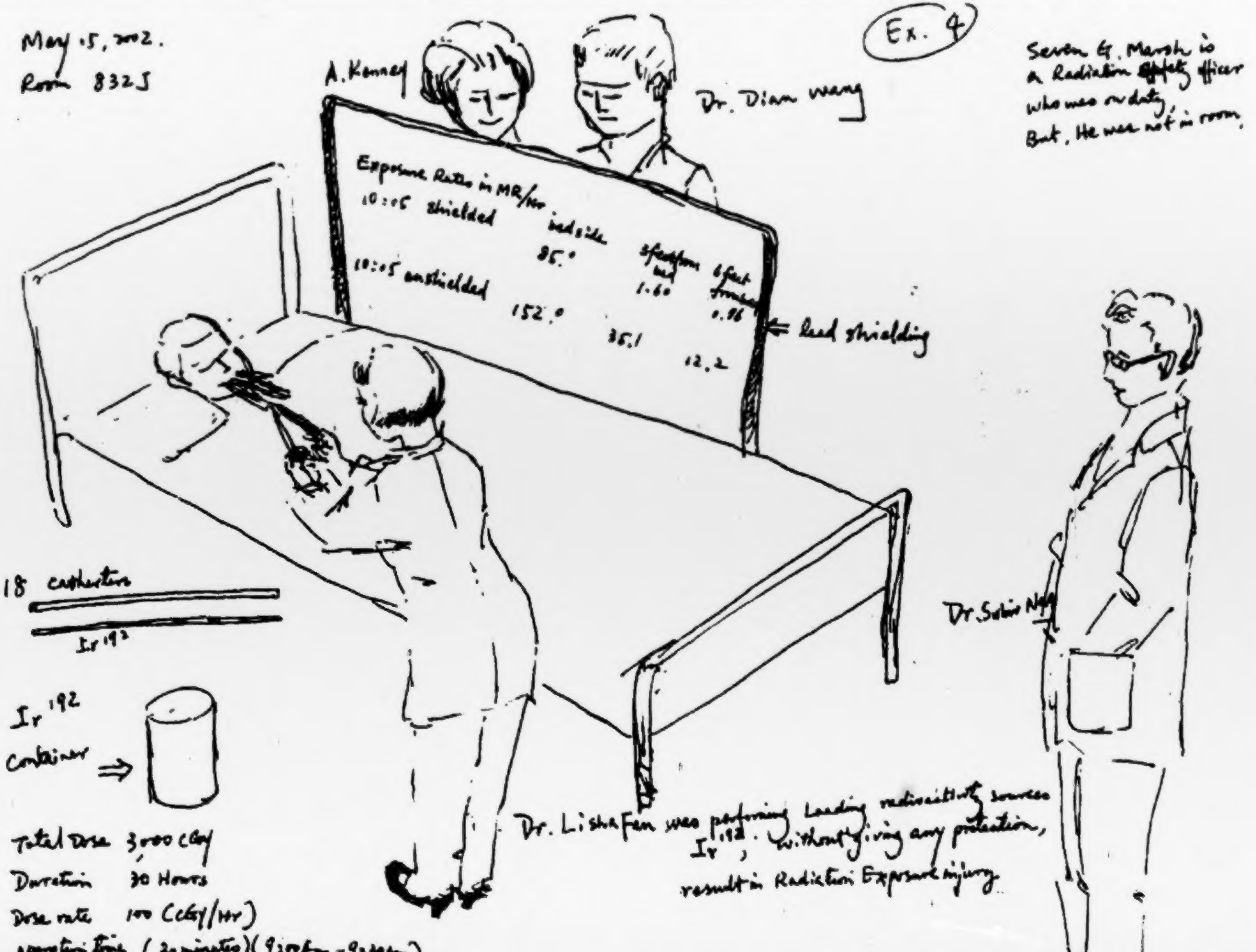
To ensure brand name dispensing, prescriber must write "Dispense As Written" or "D.A.W." on the prescription.

App-E4



7/01/99 – 12/31/99 DOE
3 mRem
01/01/2000 – 12/31/2000
DOE
24 mRem
(Anesthesiology Rotation
7/1 – 9/30/00)
01/01/2001 – 12/31/2001
DOE ND
(not detect)
1/1/2002 – 4/30/2002
DOE 16 mRem.

My Dept. physicists refuse to calculate my whole body exposure dose.



May 15, 2002.
Room 832J

Seven G. Marsh is
a Radiation ~~safety~~ officer
who was on duty,
But, He was not in room.

Exposure Rates in MR/Hr

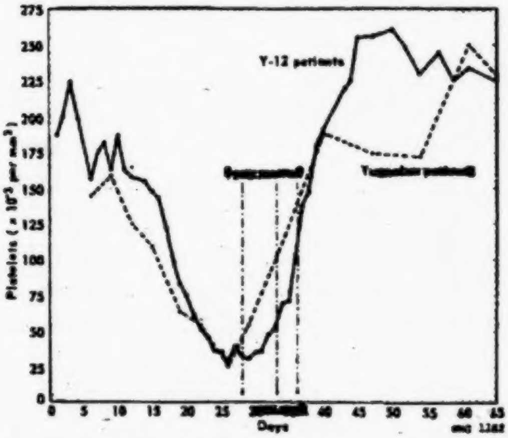
	bedside	3feet from bed	6feet from
10:05 shielded	85.0	1.60	0.96
10:05 unshielded	152.0	35.1	12.2

Total Dose 3,000 cGy
Duration 30 Hours
Dose rate 100 (cGy/Hr)
operation time (30 minutes)(9:30am – [illegible])

Dr. Lisha Fen was performing loading radioactivity sources Ir 192, without giving any protection, result in Radiation Exposure injury.

App-E4

COMPARISON OF PLATELET COUNTS IN THE Y-12 PATIENTS AND IN 4 VICTIMS OF THE VINČA ACCIDENT



COMPARISON OF GRANULOCYTE COUNTS IN THE Y-12 PATIENTS AND IN 4 VICTIMS OF THE VINČA ACCIDENT

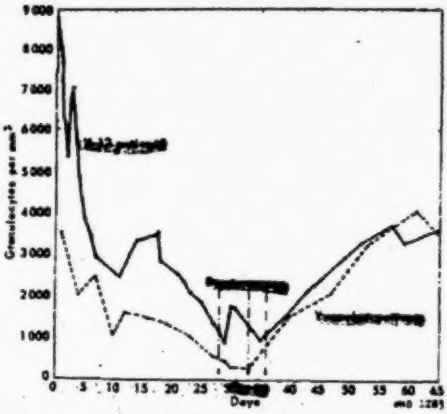


Figure 8.4. Depression and recovery of circulating blood elements in victims of the Y12 reactor accident at Oak Ridge, Tennessee, and four accidentally exposed Yugoslav scientists. (From Andrews GA, Sitterson BW, Kretchmar AL, Brucer M: Diagnosis and Treatment of Acute Radiation Injury, pp 27–48. Geneva, World Health Organization, 1961.)

OSU ALARA Program
Action Levels

Quarterly (in mrem)

Level	I	II
DDE	125	375
LDE	375	1125
SDE	1250	3750

ALARA action levels are calculated as (level I) 2.5% and (level II) 7.5% of ODH annual dose limits.

Annual Limits (in mrem)

DDE	5,000
LDE	15,000
SDE	50,000

* * *

For individuals that were monitored at another institution, the dose limit must be reduced until a dose history is received or the next calendar year begins, whichever comes first. Temporary Dose Limit will be assigned according to the following table:

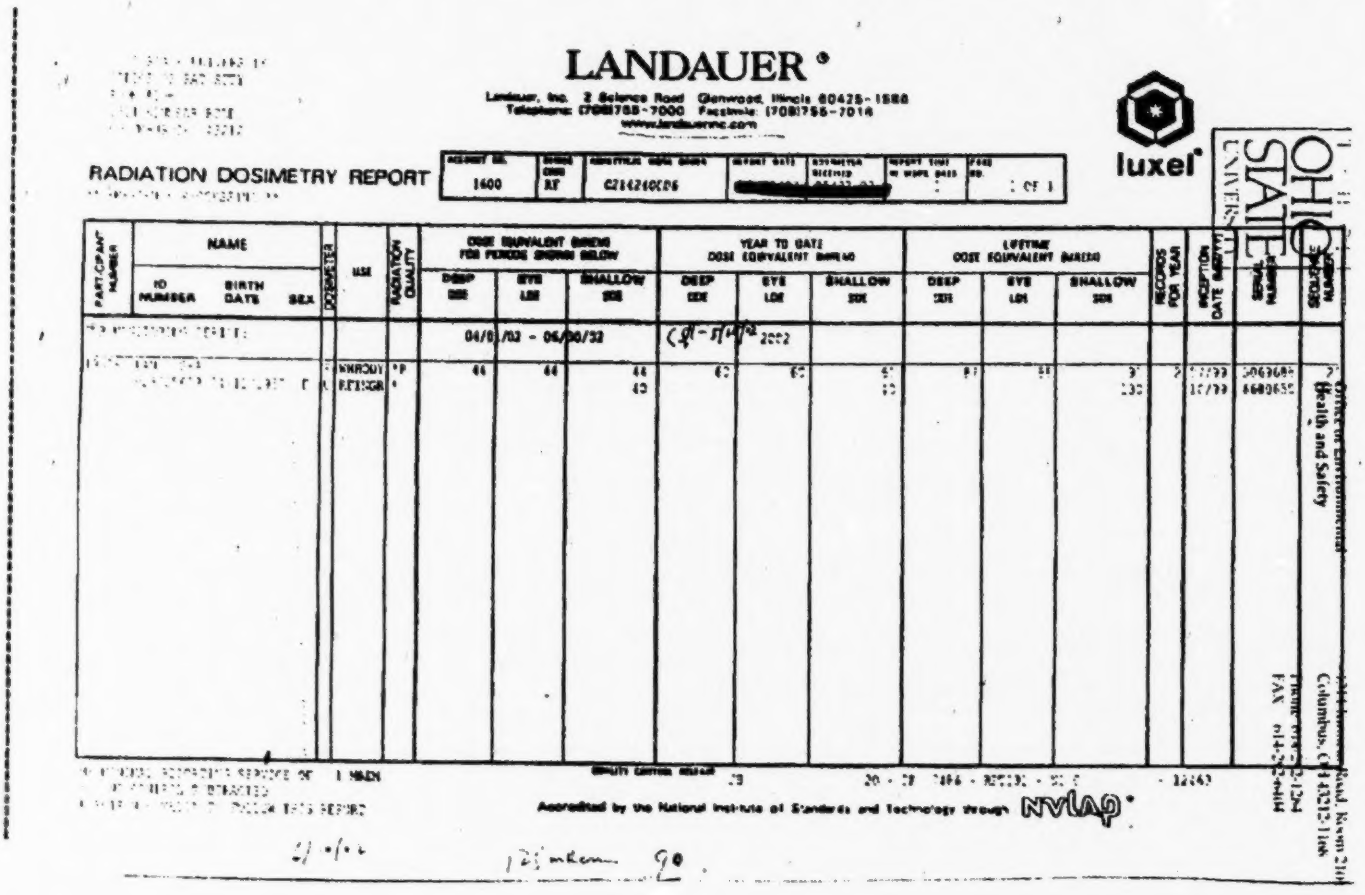
	1 Qtr. Missing	2 Qtrs. Missing	3 Qtrs. Missing
DDE (mrem)	3,750	2,500	1,250
LDE (mrem)	11,250	7,500	3,750
SDE (mrem)	37,500	25,000	12,500

what about per-procedure? what's dose limit for each procedure?

Whole body badge
#5069688C and
ring badge
#6680650R
received on 5/21/02
from Lisba Fan,
by Jennifer Houchin
to [redacted] be sent for
immediate processing
to Landauer, Inc.

Jennifer Houchin
5/21/02

App-E5



LANDAUER®

Landauer, Inc. 2 Science Road Glenwood, Illinois 60425-1586
Telephone: (708)755-7000 Facsimile: (708)755-7016
www.landauerinc.com

luxel®

OHIO STATE UNIVERSITY

Office of Environmental Health and Safety

Columbus, O H 43212-1168
Phone 614-2 2-1284
FAX 614-2 2-6404

RADIATION DOSIMETRY REPORT

ACCOUNT NO.	SERIES CODE	ANALYTICAL WORK ORDER	REPORT DATE	DOSIMETER RECEIVED	REPORT TIME IN WORK DAYS	PAGE NO.
1600	RF	C214240CR6	[redacted]	[redacted]	2	1 OF 1

PARTICIPANT NUMBER	NAME ID NUMBER	BIRTH DATE	SEX	DOSIMETER	USE	RADIATION QUALITY	DOSE EQUIVALENT (MREM) FOR PERIODS SHOWN BELOW DEEP DDE	EYE LDE	SHALLOW SDE	YEAR TO DATE DOSE EQUIVALENT (MREM) DEEP DDE	EYE LDE	SHALLOW SDE	LIFETIME DOSE EQUIVALENT (MREM) DEEP DDE	EYE LDE	SHALLOW SDE	RECORDS FOR YEAR	INCEPTION DATE (MM/YY)	SERIAL NUMBER	SEQUENCE NUMBER
[illegible]							04/01/02 - 06/30/02			(Q1-5/14/02 2002									
[illegible]	[illegible]	[illegible]	F	[illegible]	WHBODY RFINGR	P *	44	44	44 40	62	62	62 80	87	88	97 130	2	12/99 12/99	2063698 4480655	2

[illegible] 1 WADN

QUALITY CONTROL RELEASE 29 20 - 28 7496 - 827131 - 51 0 - 12163

Accredited by the National Institute of Standards and Technology through NVLAP®

2/ ·/··

125 mrem 90

App-E5

AMY EDALJI, M.D.
R. ROGER KOMER, M.D.
SUITE 5A
1180 BEACON STREET
BROOKLINE, MASSACHUSETTS 02446

TELEPHONE 617-730-6300
FAX 617-734-8484

Date [redacted] 2002

TO WHOM IT MAY CONCERN

This is to certify that

D. Lisho Fan

was under my professional care

for the following

Fatigue; ? Neurasthenia
H/o Radiation Exposure

~~He~~/She is advised rest for a period

of 2 to 4 ~~days~~/weeks as needed.

~~He~~/She may return to work ~~on~~ When she feels well

Remarks Return for Followup in 1-2 weeks

Amy Edalji MD

R. Roger Komer MD

App-E5

AMY EDALJI, M.D.
R. ROGER KOMER, M.D.
SUITE 5A
1180 BEACON STREET
BROOKLINE, MASSACHUSETTS 02446

TELEPHONE 617-739-6300
FAX 617-734-8484

Date [redacted] 17 2002

TO WHOM IT MAY CONCERN

This is to certify that
A. Li Sha Fan

was under my professional care

for the following
Fatigue, H/o Radiation Exposure.
? Neutropenia

~~He~~/She is advised rest for a period

of ______ ~~to~~ [redacted] as needed.

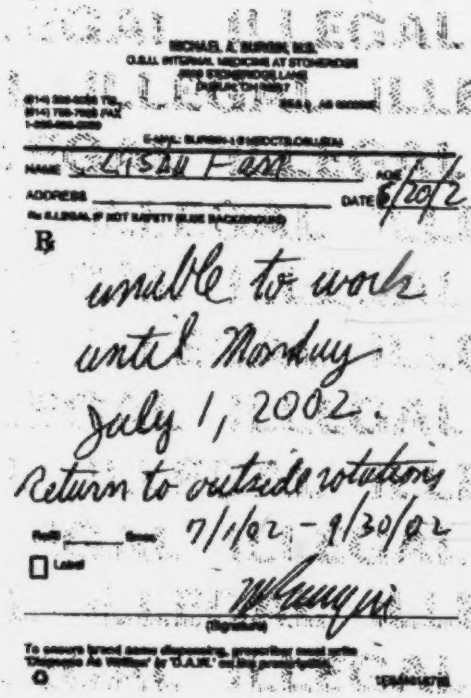
~~He~~/She may return to work ~~on~~ When She feels well

Remarks F/u with her Physician in
Columbus

Amy Edalji MD

R. Roger Komer MD

App-E6



MICHAEL A. [illegible], M.D.
O.S.U. INTERNAL MEDICINE AT STONERIDGE
[illegible] STONERIDGE LANE
DUBLIN OH [illegible]
[illegible] TEL
[illegible] FAX
E-MAIL: [illegible]

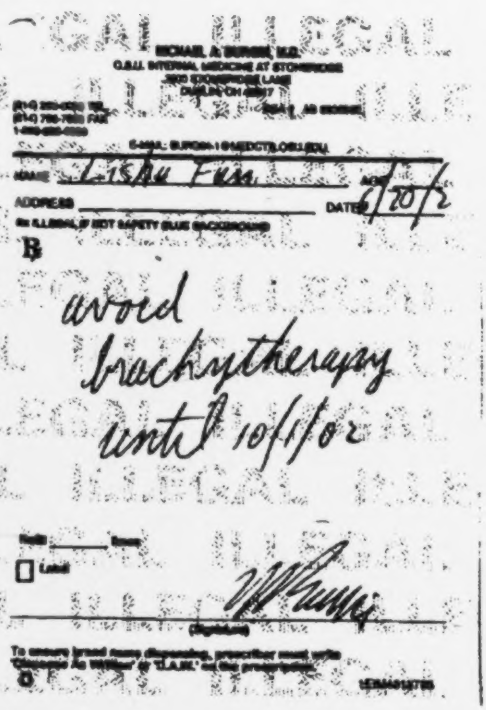
NAME Lishu Fan AGE
ADDRESS ______ DATE 6/20/2
Rx ILLEGAL IF NOT SAFETY BLUE BACKGROUND
℞

unable to work
until Monday
July 1, 2002.
Return to outside rotations
7/1/02 - 9/30/02

Refill ______ times
☐ Label

(Signature)

To ensure brand name dispensing, prescriber must write 'Dispense As Written' or 'D.A.W.' on the prescription.



MICHAEL A. [illegible], M.D.
O.S.U. INTERNAL MEDICINE AT STONERIDGE
[illegible] STONERIDGE LANE
DUBLIN OH [illegible]
[illegible] TEL
[illegible] FAX
E-MAIL: [illegible]

NAME Lishu Fan AGE
ADDRESS ______ DATE 6/20/2
Rx ILLEGAL IF NOT SAFETY BLUE BACKGROUND
℞

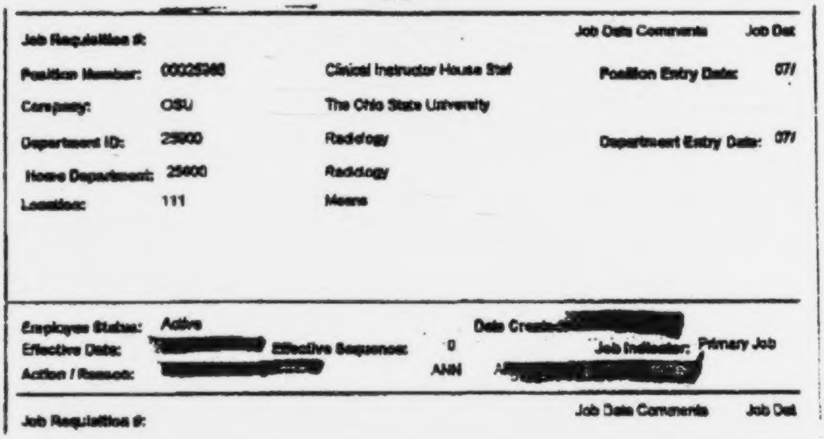
avoid
brachytherapy
until 10/1/02

Refill ______ times
☐ Label

(Signature)

To ensure brand name dispensing, prescriber must write 'Dispense As Written' or 'D.A.W.' on the prescription.

App-E7



Job Requisition #:			Job Data Comments	Job Dat
Position Number:	00025388	Clinical Instructor House Staf	Position Entry Date:	07/
Company:	OSU	The Ohio State University		
Department ID:	25900	Radiology	Department Entry Date:	07/
Home Department:	25600	Radiology		
Location:	111	Means		

Employee Status: Active
Date Created: [redacted]
Effective Date: [redacted]
Effective Sequence: 0
Job Indicator: Primary Job
Action / Reason: [redacted]
ANN [redacted]

Job Requisition #: Job Data Comments Job Dat

https://psweb06.erp.ohio-state.edu/servlets/iclientservlet/peoplesoft8/?ICType=Panel&Menu 2/12/2003

App-E7

OHIO STATE UNIVERSITY MEDICAL CENTER

University Hospitals
Medical Staff Affairs

Room 588, Battelle Bldg. 13
1375 Perry Street
Columbus, OH 43201

Phone: (614) 293-7444
FAX: (614) 293-6609

July 13, 2001

Lisha Fan, M.D.
080 CHRI
300 West 10th Ave.
Columbus, OH 43210

RE: REAPPOINTMENT
Credentials Committee: 05/07/2001
MSAC: 05/09/2001
Hospital Board: 05/24/2001

Dear Lisha Fan, M.D.:

We are pleased to inform you the governance bodies of The Ohio State University Medical Center, upon the recommendation of the Credentials Committee, has approved your application for reappointment, as PGY3 Limited status in the Department of Radiology, for the current appointment period of 07/01/01 to 06/30/03. Privileges have been approved as requested.

We appreciate your interest in continuing your membership and clinical privileges and look forward to a long and mutually rewarding educational and professional experience.

Sincerely,

H. S. Mekhjian MD

Hagop S. Mekhjian, MD
Associate Vice President, Health Sciences
Medical Director
Associate Dean for Clinical Affairs

CC: Department of Radiology and Credentials File

E7

The Ohio State University Hospitals / University Hospitals East / College of Medicine and Public Health
Arthur G. James Cancer Hospital and Richard J. Solove Research Institute

App-E7

OHIO STATE
UNIVERSITY MEDICAL CENTER

Department of Psychiatry

Outpatient Clinic
1670 Upham Drive
Columbus, OH 43210-1250

Phone: (614) 293-[illegible]
FAX: (614) 293-3828

Ex. 7

[redacted]

Hagop S. Mekhjian, M.D.
Professor
Internal Medicine
Chief Medical Officer
OSU Medical Center
130 Doan Hall
CAMPUS

PERSONAL AND CONFIDENTIAL

RE: Lisha Fan, M.D.

[redacted]

On July 2, 2002, Dr. Douglas Scharre and I met with Dr. Reinhard Gahbauer and Radiation Oncology Resident, Lisha Fan. Issues have been raised about Dr. Fan's response to stress and her academic performance. At this time, Dr. Gahbauer does not feel a need to limit Dr. Fan's clinical privileges. We have referred Dr. Fan to Dr. Igor Janke for a psychiatric assessment and will communicate with your office after that is completed.

Sincerely,

Stephen F. Pariser, M.D.
Professor
Chairperson
Committee on Physician Health

[redacted]
[redacted]mittee members
D[redacted]
Dr. Fan

App-E8 (a)

To: Dr. Gahbauer 7/18/02
RE: Stop note

As I understood or I have been told that dictation should be done within 24 hours for all new consulted patients & all completed treatment patient.

I have been doing this(dictated all the new consults & completed treatment within 24 hours) for 3 years.

Between 5/16 to 6/30/02, I was out of service, due to my sick leave. Now, I am rotating at Neuro-surgery(staring 7/1/02 to present).

The following listed patients were all completed their treatment during my sick leave.

Patients name	Started treat	Completed treat
Smith, Bruce MR#907617470(RT#02-456)	4/25/02	5/24/02
Varner, Gorden MR#970307114(RT#02-287)	4/17/02	5/31/02
Kreager, Patricia MR#907177793(RT#02-360)	4/22/02	5/30/02
Lewis, Stanley MR#907189107(RT#02-365)	4/29/02	5/30/02
Byrn, Tim MR#907608677(RT#02-291)	3/16//02	6/5/02
Brill, Ralph MR#906312430(RT#02-0490)	5/13/02	6/26/02
Young, Merrilyn MR#906113628(RT#02-0550)	5/15/02	5/31/02
Gardner, Connie MR#907541190(RT#02-0327)	4/1/02	5/21/02
Lykes, David MR#302504869(RT#02-0242)	5/14/02	5/29/02
Keaton, Veryl MR#900120060(RT#02-0533)	5/7/02	5/[illegible]02

If Dr. Nag had No time to dictate those. I will ne very happy to help.

Thanks!
Lisha Fan M.D.,

App-E8(b)

From: Reinhard Gahbauer
To: Fan, Lisha; Nag, Subir; Tippin, Douglas
Date: 7/18/02 2:55PM
Subject: Stop notes

Dear Lisha,

I appreciate very much that Doug Tippin has dictated the stop notes on those patients whom neither you nor him have met during your 3 month assignment with Dr. Nag. I think it would be very appropriate if you dictate on patients you had met and evaluated initially. I would think that summarizing the treatment on those patients is a valuable educational experience, particularly for you, since you missed more than half of this precious experience. As you know, many residents in other programs have great difficulty satisfying the requirements of a complete brachy totation.

Please let me know if there are any difficulties. I am sure Dr. Nag will be happy to help if you have questions on some details.

Good luck
RG

App-E9

OHIO STATE
JAMES CANCER HOSPITAL AND SOLOVE RESEARCH INSTITUTE

Arthur G. James Cancer Hospital and
Richard J. Solove Research Institute
Division of Radiation Oncology

300 West 10th Avenue
Columbus, OH 43210

Phone: (614) 293-8415
FAX: (614) 293-4044
Patient Scheduling: (614) 293-3241
Web Site Address:
http://www-radonc.med.ohio-state.edu

Ex. 9

July 23, 2002

Lisha Fan, M.D.
James Cancer Hospital
Radiation Oncology
Ste 083-A
CAMPUS

Dear Dr Fan:

Welcome back to resume your duties in our program! I trust that my many efforts to make independent advice available to you have helped you understand and [redacted]

Due to your illness from May 16 to July 1, 2002 you have not completed the required rotation in brachytherapy. As you know the consequences of an incomplete rotation are discussed in our procedures posted on our web site. After extensive discussions with the faculty, I use my discretion to allow you to satisfy the requirements contingent on exemplary attendance and performance in the next quarter and remaining year. I must see written medical justification for any absence, should it become necessary. I will then again consult with the faculty if your admission to the Board examination can indeed be supported.

The training in our specialty requires intensive study to cover the broad spectrum of knowledge required for safe and successful practice. The Board recognized this when it extended the length of training from 3 to 4 years. Beyond the cognitive skills to be acquired, you are expected to fully participate in the evaluation, treatment and follow up of patients. As a resident advances through training, he/she must assume more and more responsibility for patients and show increasing ease, skill, maturity and responsibility in the many necessary interactions with peers, staff, referring physicians.
To be prepared for clinical practice after the program, it [redacted] cl[redacted], [redacted]
You will recall that in our [redacted] change of specialty is not seen as failure, but indicates maturity and critical self-assessment. For a successful career it is most critical that a person's skills are perfectly matched with the challenges of a given specialty. You may want to consider this again in light of your fear of radiation and your objective test scores.

Please let me know if you need additional guidance and assistance. I wish you success in defining and finding a successful path to become a responsible and successful practicing physician.

Yours truly,

R. Gahbauer

Reinhard Gahbauer, MD
Professor and Director

Agreed

L. Fan, MD

NCI CCC
A Comprehensive Cancer Center Designated by the National Cancer Institute

The James... The Next Generation of Hope

App-E9

UNIVERSITY
MEDICAL
CENTER

University Hospitals
Graduate Medical Education

125 Doan Hall
410 West 10th Avenue
Columbus, OH 43210-1228

Phone: (614) 293-7326
FAX: (614) 293-4989

Ex. 9

July 24, 2002

Lisha Fan, MD
Resident, Radiation Oncology Program
080 CHRI
300 West 10th Avenue
Columbus, Ohio 43210

Re: Radiation exposure

Dear Dr. Fan,

After our conversation a couple weeks ago, I contacted the Ohio State University Radiation Safety Office which is part of the University's Office of Environmental Health and Safety to discuss the issues that you brought to my attention regarding the events in mid-May. The University's Radiation Safety Office is an entity outside of the Medical Center and is charged with monitoring the use of radiation for research or therapeutic purposes on campus.

Robert Patterson from that office has reviewed the records from your case and has found that there was [redacted] radiation monitoring device readings. In fact, you were well below the exposure limits set by the Ohio Department of Health. A copy of his letter to me is enclosed.

Given your previous concerns regarding a potential radiation exposure, I hope that the results of this review by the Radiation Safety Office further reassure you that you indeed did not have a significant radiation exposure in May of this year.

If you have any questions about this issue further, please feel free to contact me at 293-7326.

Sincerely yours,

Andrew M. Thomas, MD, MBA
Assistant Dean for Graduate Medical Education
Assistant Medical Director

CC: Reinhard Gahbauer, MD
Kate Haller, JD
Carol Hasbrouck, MA

The Ohio State University Hospitals / The Arthur G James Cancer Hospital and Richard J. Solove Research Institute / College of Medicine and Public Healt

App-E9

OHIO STATE
UNIVERSITY
MEDICAL
CENTER

Department of Psychiatry

Outpatient Clinic
1670 Upham Drive
Columbus, OH 43210-1250

Phone: (614) 293-8039
FAX: (614) 293-3820

EX. 9

July 24, 2002

Re: Lisha Fan, MD

To Whom It May Concern,

I met with Dr. Fan this morning to review the difficulties she is experiencing in her residency, including recent possible radiation exposure. My working diagnosis is Occupational Problem (V62.2) I will obtain further information before seeing her again. We agreed to meet on August 7, 2002 at 10^{00} am.

Sincerely,

Igor Jarke MD

Dr. Jarke refused to explained why.

I would like to meet him with Dr. Gabhamer & Dr. Parisen together. if that's not possible I will ~~refuse~~ not to see him again.

UD

The Ohio State University Hospitals / The Arthur G. James Cancer Hospital and Research Institute / College of Medicine and Public Health

App-E9

THE OHIO STATE UNIVERSITY

Office of Environmental
Health and Safety

1314 Kinnear Road, Room 210
Columbus, OH 43212-1168

Phone 614-292-1284
FAX 614-292-6404

July 19, 2002

E9

Andrew Thomas, M.D., Assistant Dean
Graduate Medical Education
125 Doan Hall
410 West 10th Avenue
Columbus, Ohio 43210-1228

Dear Dr. Thomas:

Radiation Safety has reviewed the radiation exposure that Lisha Fan, M.D. received while loading radioactive material during a brachytherapy procedure on May 15, 2002. She was wearing her personnel-monitoring device during this procedure. This device was sent to Landauer for emergency processing. Her radiation exposure was determined to be 44 millirems. This exposure is well below the exposure limits set by the Ohio Department of Health, and well within what we would expect for someone performing this procedure. It should be noted that a representative from Radiation Safety was present during this procedure and did not notice anything out of the ordinary.

If you have questions please do not hesitate to call me at 2-1284.

Thank you.

Sincerely,

Robert E. Peterson Jr.

Robert E. Peterson, Jr.
University Radiation Safety Office

CC: RS Files

App-E10

Andrew M. Thomas, M,D., MBA July 26, 2002
Assistant Dean for Graduate Medical Education
Assistant Medical Director

RE: Radiation Exposure and Radiation Oncology In-Training scores

Dear Dr. Thomas

Thank you very much for spending your time to investigate these two issues.

I would like to have a meeting with you , Dr. Makhjian, Kate Haller J. D., Dr. Gahbauer, Dr. Pariser, Dr. Scharre, Dr. Janke, Carol Hasbrock, Jeanifer Houchin and Robert Peterson.

Anyday after my Radiation Oncology Board Exam (Sept.12-13, 2002)

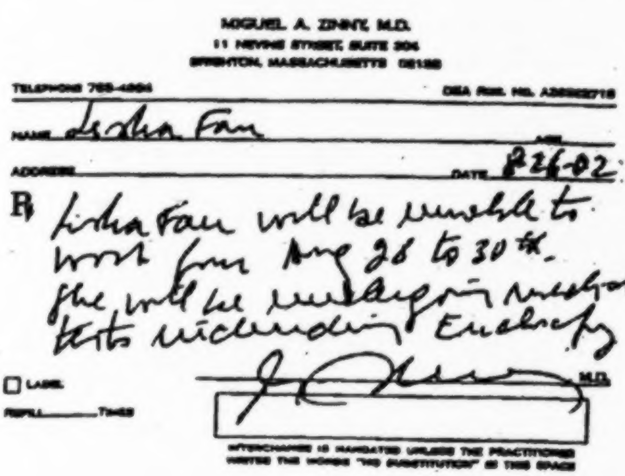
I am looking forward to meet you!

Sincerely,

Lisha Fan, M. D.
Cc: Dr. Gahbauer

App-E11(c)

EX.11.



MIGUEL A. ZINNY, M.D.
11 NEVINS STREET, SUITE [illegible]
BRIGHTON, MASSACHUSETTS [illegible]

TELEPHONE [illegible] DEA REG. NO. [illegible]

NAME Lisha Fan AGE

ADDRESS DATE 8-26-02

℞ Lisha Fan will be unable to work from Aug 26 to 30th. She will be undergoing medical tests including Endoscopy

M.D.

☐ LABEL

REFILL ____ TIMES

INTERCHANGE IS MANDATED UNLESS THE PRACTITIONER WRITES THE WORDS "NO SUBSTITUTION" IN THIS SPACE

App-E11(a)

Dear Dr. Gahbauer:

How are you?

I have sent a certified letter to you and Dr. Pariser contanig a Sick note from Dr. Komer on 8/14/02.

Also, I will have two doctor's appointment on 8/22 and 8/26/02.

Thank you for your understanding.

Please say hello to everyone for me.

Sincerely,

Lisha Fan, M.D.
17 Jackson St.
Newton, MA 02459

App-E11(b)

Dear Dr. Gahbauer: August 27, 2002

I have received a certified mail from you on Aug. 24, 2002.

I have sent a sick note to you on Aug. 14. 2002, used certified mail, and received the domestic return receipt with Dolly's signature on it, on Aug. 26, 2002.

I saw Dr. Zinny, GI specialist yesterday, and scheduled for upper GI endoscope today. I went though admission and screen, however, I was told the computer was shut down. The procedure might be down on Aug. 29, 2002.

Please find a sick note from Dr. Zinny.

Also, I would like to take seven days vacation time (Sept. 3rd, 4th, 5th, 6th, Sept. 9th ,10th and 11th)for preparing my board exam.

Thank you for understanding!

Sincerely,

Lisha Fan M.D.,
PGY-5

App-E11(d.)

Dear Dr. Pariser.

I will not able to attend the meeting on Friday, August the 16th. due to personal reason.

please accept my apologies.

Sincerely,

Lihe Fan MD.

AMY EDALJI, M.D.
R. ROGER KOMER, M.D.
SUITE 8A
1180 BEACON STREET
BROOKLINE, MASSACHUSETTS 02446

TELEPHONE 617-739-6300
FAX 617-734-8484

EX. 11

Date 8/13 2002

TO WHOM IT MAY CONCERN

This is to certify that

Dr. Lihe Fan

was under my professional care

for the following Seen today for

Nausea, Abdo Pain & Wt Loss.

~~He~~/She is advised rest for a period

of 1 to 2 ~~days~~/weeks as needed.

He/She may return to work on __________

Remarks Dr. Fan has been referred to

a Gastro-enterologist for

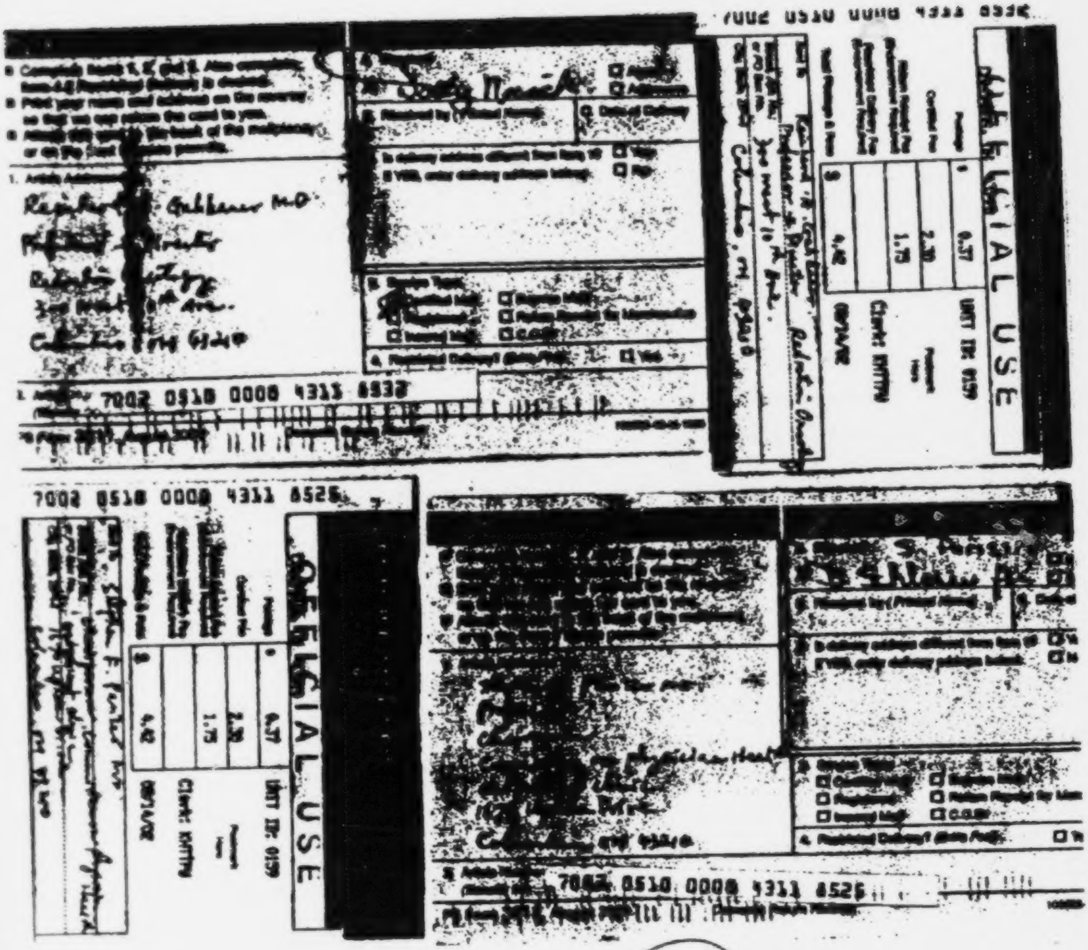
further evaluation / and workup

Amy Edalji MD

R. Roger Komer MD

(23)

App-E11(d.)



1. Article Addressed to:

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number 7002 0510 0000 4311 8532

7002 0510 0000 4311 8532

OFFICIAL USE

Postage	$ 0.37	UNIT ID: 0159
Certified Fee	2.30	Postmark Here
Return Receipt Fee (Endorsement Required)	1.75	
Restricted Delivery Fee (Endorsement Required)		Clerk: KMTTW
Total Postage & Fees	$ 4.42	08/14/02

Columbus, OH 43210

7002 0510 0000 4311 8526

OFFICIAL USE

Postage	$ 0.37	UNIT ID: 0159
Certified Fee	2.30	Postmark Here
Return Receipt Fee (Endorsement Required)	1.75	
Restricted Delivery Fee (Endorsement Required)		Clerk: KMTTW
Total Postage & Fees	$ 4.42	08/14/02

2. Article Number 7002 0510 0000 4311 8526

(Ex. 11)

BAC

App-E12

HEALTH SCIENCES CENTER

Office of the Associate Vice President, Health Sciences
Chief Medical Officer

130 Doan Hall
410 West 10th Avenue
Columbus, OH 43210

Phone: (614) 293-8158
FAX: (614) 293-4909

September 5, 2002

Ex. 12

Lisha Fan, M.D.
17 Jackson Street
Newton, MA 02159

Dear Dr. Fan,

I have been following up the evolution of your interactions with the Committee of Physician Health.

You were copied on a letter that I received from Dr. Stephen F. Pariser, Chair of the Committee on Physician Health, in which he indicated that they had referred you to Dr. Janke for psychiatric assessment. Dr. Pariser also indicated that he would communicate with me following the completion of this assessment. It has been brought to my attention that you have not followed through with your evaluation by Dr. Janke, therefore the Committee on Physician Health is unable to complete their assessment and their final evaluation or recommendation. Finally, I have been informed by Dr. Gahbauer that you have been sick lately and seeking medical advice in Boston.

My purpose in writing to you at this time is to be sure that you follow through with the recommendations of the Committee on Physician Health which would form the basis of their assessment of your health and your ability to discharge your clinical responsibilities. I would therefore urge you to contact either Dr. Pariser or Dr. Janke directly and complete your evaluation with Dr. Janke to the satisfaction of the committee. I appreciate your cooperation in this matter and cannot emphasize the importance of discharging your responsibilities.

Best wishes.

Sincerely yours,

H S Mekhjian

Hagop S. Mekhjian, M.D.
Associate Vice President, Health Sciences
Chief Medical Officer

HSM/jo

cc: Reinhard Gahbauer, M.D.
Stephen F. Pariser, M.D.

X:\Correspondence 2002\Fan 090502.doc

College of Dentistry / College of Medicine and Public Health / College of Nursing / College of Optometry / College of Pharmacy / College of Veterinary Medicine / School of Allied Medical Professions / School of Biomedical Sciences / School of Public Health / The Ohio State University Hospitals / The Arthur G. James Cancer Hospital and Richard J. Solove Research Institute /University Hospitals East / OSU & Harding Behavioral Healthcare and Medicine / John A Prior Health Sciences Library

HEALTH
SCIENCES
CENTER

Office of the Associate Vice President, Health Sciences
Chief Medical Officer

130 Doan Hall
410 West 10th Avenue
Columbus, OH 43210

Phone: (614) 293-8158
FAX: (614) 293-4989

(Ex. 12)

September 26, 2002

MEMORANDUM TO FILE: Dr. Lisha Fan

Dr. Lisha Fan paged me today indicating that she had to meet with me. I agreed to meet with her together with Ms. Carol Hasbrouck, Director of Graduate Medical Education at The Ohio State University.

During this meeting, she brought up the following issues.

1. **Radiation Exposure.** She kept insisting that she had been exposed to radiation and disagreed with the calculations made by the Office of Radiation Safety. I basically referred her to the letter of Dr. Andrew Thomas and the fact that she had been evaluated by our expert at Ohio State University and recommended that any disputes about the physics of radiation or the calculation should be discussed with the Office of Radiation Safety. I also acknowledged that I was not a radiation expert and therefore I could not comment on the accuracy or inaccuracy of the radiation calculations. I encouraged her, if necessary, to discuss it further with Dr. Thomas who had done the original investigation.

2. **Academic Performance.** She wanted to know if she could see the evaluation of her rotations in Radiation/Oncology. She claimed that she had not seen her evaluations and was never told what she had to improve. She went on to review the history of her sick leave under the "radiation exposure" and the fact that she had seen Dr. Steve Pariser, Chair of the Committee of Physician Health. Please see the communication from Dr. Pariser, dated July 3, 2002. She also indicated that she had met with Dr. Janke once. I emphasized to her that I did not wish to have any confidential information, but it was my understanding that Dr. Gahbauer had referred her to the Committee of Physician Health, who in turn referred her to a psychiatrist primarily to be sure that she was well enough to fulfill her responsibilities as a physician and as a trainee.

   She gave me assurances that she was well enough to fulfill the entire spectrum of her clinical activities and that she had been prescribed some medication by her physicians in Boston and she felt fully capable. She had brought a note to Dr. Gahbauer from her physicians to that effect. I did not pursue this any further.

College of Dentistry / College of Medicine and Public Health / College of Nursing / College of Optometry / College of Pharmacy /
College of Veterinary Medicine / School of Allied Medical Professions / School of Biomedical Science / School of Public Health /
The Ohio State University Hospitals / The Arthur G. James Cancer Hospital and Richard J. Solove Research Institute / University Hospitals East /
OSU & Harding Behavioral Healthcare and Medicine / John A Prior Health Sciences Library

App-E12

3. **Annual Meeting.** She indicated to me that she had requested to attend the annual meeting by a letter, dated September 23, 2002 to Dr. Gahbauer and other faculty in the department. She also indicated that Dr. Gahbauer had indicated to her that she could not go. Both Ms. Hasbrouck and myself emphasized that the program director has the ultimate responsibility to approve or disapprove all vacations, meeting attendance, and other rotations as part of the responsibilities of the program director to provide coverage and to allow the candidate to fulfill their responsibilities. I basically urged her to discuss this with Dr. Gahbauer as a follow up to her letter of September 23, 2002.

The meeting was concluded in a very pleasant and amicable way with Ms. Hasbrouck assuming responsibility to facilitate a review of her academic performance and any discussions with the program director regarding the attendance at professional meetings. Dr. Fan would pursue, if necessary, the radiation exposure issue with the University Radiation Safety Office.

Hagop S. Mekhjian, M.D.

X:\Correspondence 2002\Fan [illegible].01.02.doc

App-E13

Thursday, September 12, 2002 01: 30 pm

Candidate Number:48122
Name: Fan, Lisha
Seat Number: G3

Friday, September 13, 2002 08: 00 am

Candidate Number:48122
Name: Fan, Lisha
Seat Number: G3

App-E14(a)

Dear Dr. Gahbauer: 9/16/02

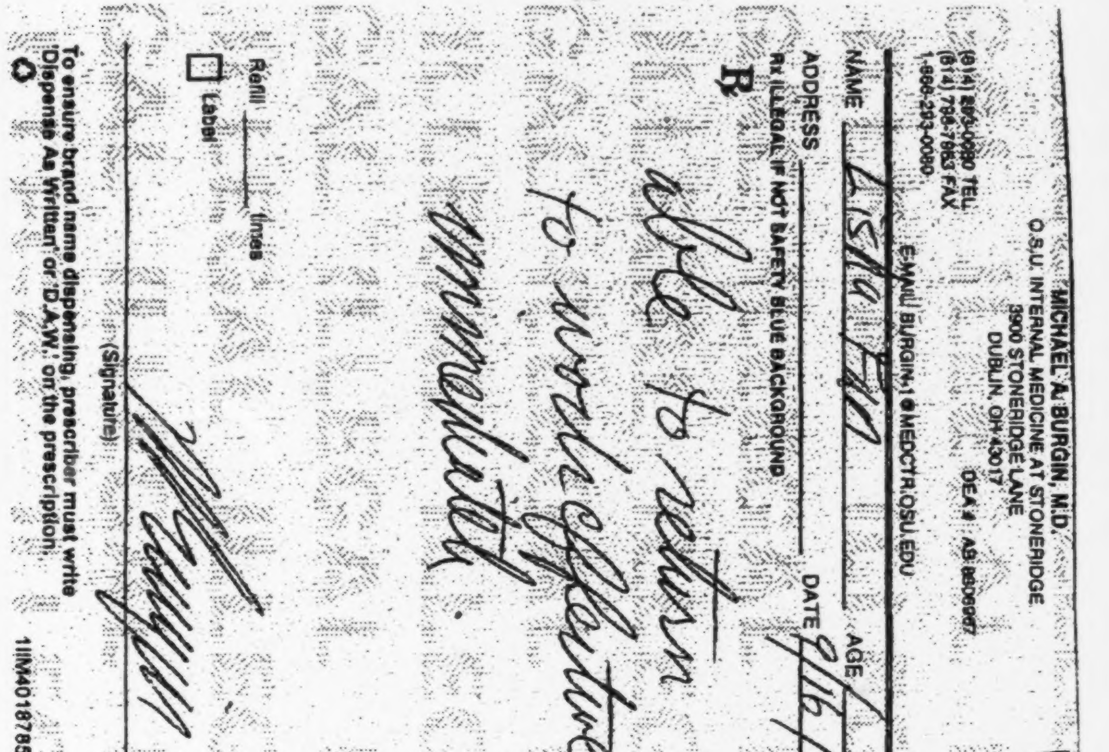
Thank you for your concern for my health. As you requested, please find enclosed Dr. Burgin's note, stating that I am able to return to work effective immediately.

I hope that this will assure you that I am able to complete my Neurosurgical pathology rotation by end of September and continuing my residency after this rotation. Thank you!

Sincerely,

Lisha Fan M.D.,
PGY-5

App-E14(b)



137

MICHAEL A. BURGIN, M.D.
O.S.U. INTERNAL MEDICINE AT STONERIDGE
3900 STONERIDGE LANE
DUBLIN, OH 43017
DEA #: AB 8509967
(614) 293-0080 TEL
(614) 766-7863 FAX
1-866-293-0080
E-MAIL BURGIN-1@MEDCTR.OSU.EDU

NAME Lisha Fan AGE

ADDRESS DATE 9/16/02

Rx ILLEGAL IF NOT SAFETY BLUE BACKGROUND

℞ able to return to work effective immediately.

Refill ____ times

☐ Label

(Signature)

To ensure brand name dispensing, prescriber must write 'Dispense As Written' or 'D.A.W.' on the prescription.

1IIM4018785

App-E15 (a)

September 19, 2002
Dear Dr. Gahbauer:
RE: ASTRO meeting and On-call schedule

As I understand that our resident benefit including "support for a National Meeting in the 3rd or 4th year($1000)"

Since I am 4th year resident, I would like to have a chance to go to the ASTRO meeting this year.

In addition, I will have more than ten interviews at ASTRO meeting site. The ASTRO meeting will take place on October 5-10. Thus, I will not able to take the calls on October 5-10.

Thank you for giving my Situation kindest regards.

Sincerely,

Lisha Fan, M.D.,
PGY-5

App-E15 (b)

Resident Program at OSU Radiation Oncology Page 12 of 12

BENEFIT (Stipends, travel, meeting)

Salary and benefits are provided as described in the Medical Center's Resident Agreement and Contract. Additional benefits provided by the program faculty are:

1. A personal computer, networked to the departmental network and to the hospital network and hospital PACS.
2. $500 initial stipend to purchase educational materials.
3. Support for a national meeting in the 3rd or 4th year ($1000)

Updated 2/22/02 9:30 AM

7/18/02

App-E15(c)

September 23, 2002
Dear Drs. Gahbauer, Bauer and Grecula:
RE: ASTRO meeting and on call schedule

As I understand that our resident benefit includes "support for a national meeting in the 3rd or 4th year ($ 1000)" on our web site. Since I am a 4th year resident. I would like to have the same opportunity as my peers, Douglas Tippin (4th year resident), Ben Liu (3rd year resident) and Sherif Yacoub (3rd year resident) to go to the ASTRO meeting of this year.

In addition, I will have more than ten job interviews at the ASTRO meeting site. The ASTRO meeting will take place on October 5-10. I will not able to take the calls October 5-10. Since all the residents are going to the ASTRO meeting except of J.C Abdou. I have discussed with him about switch calls. He said to me that he has previous engagement. I am willing to make up these calls (6 days), when I return from this meeting.

Furthermore, As Dr. Gahbauer had mentioned that I had gone to a meeting in 2000. I went to the 2nd International Conference of the International Society of Intraoperative Radiation Therapy. That was taken place on October 26-28, 2000, at Boston. I had a poster presentation at that meeting, and Douglas Tippin had an oral presentation at the same meeting. Enclosed please find the copy of the letter of confirmation of the registration.

One another thing, I was scheduled on call from September 16-22, 2002. However, on September 20, 2002, I then learned about my name was replaced by J.C. Abdou. on September 18, 2002. I would like to know. It is possible for me to learn the reason, as to why, I have been replaced.

Thank you for giving my situation your kindest regards.

Sincerely yours,

Lisha Fan M.D.
PGY-5
4th year Radiation Oncology resident
Cc: Hagop S. Mekhjian M.D.
Stephen F. Pariser M.D
October 3, 2002

App-E15 (d)

Dear Drs. Gahbauer, Bauer and Grecula:

RE: ASTRO meeting, equal opportunity of the education and on call schedules, and job interview.

I have asked on numerous accounts regarding my attendance at this year's ASTRO meeting. I have also greatly stressed the importance of my presence at this meeting. Not only am I entitling to the same rights as my peers, but I have also expressed that the ASTRO meeting is my only opportunity to attended job interview with potential employer. As you may recall, you have said to me on September 20, 2002. You will not allow me to take spare time off to go to any job interview during my remaining residency.

I am a 4th year resident, our department did not support me once to attend ASTRO. All residents will go to this year's ASTRO except of 2nd year resident.

I can not quite comprehended why you would singled me out from my peers, and prevent me for getting my job.

And in regards to the on call schedule, every resident should have equal duty on call. As you have said that the on call schedule should have my input. I have made my changes state on the previous letter. I believe that Dr. Abdou should take the calls from October 5th to 11th.

I have decided that I am going to this ASTRO meeting, thus I am not able to take calls from October 5th to 11th.
Please understand that I am only requesting the equal opportunity of the education and on call schedules.
Thank you for giving my situation your kindest regards.

Sincerely yours,

Lisha Fan M.D.
PGY-5
4th year Radiation Oncology Resident
Cc: Dr. Spigos, Dr. Mekhjian, Dr. Thomas, Dr. Pariser and Carol Hasbrouck.

App-E16

OHIO STATE
JAMES CANCER HOSPITAL AND SOLOVE RESEARCH INSTITUTE

Arthur G. James Cancer Hospital and
Richard J. Solove Research Institute
Division of Radiation Oncology

300 West 10th Avenue
Columbus, OH 43210

Phone: (614) 293-8415
FAX: (614) 293-4044
Patient Scheduling: (614) 293-3241
Web Site Address:
http://www-radonc.med.ohio-state.edu

Ex. 16

October 8, 2002

Lisha Fan, M.D.
James Cancer Hospital
Radiation Oncology
CAMPUS

Dear Dr. Fan,

After being explicitly told in writing that you were not excused to attend the ASTRO meeting, you left without permission to attend the meeting. In addition, you were scheduled to be on call this week and have abandoned those patient care responsibilities without securing backup coverage. The faculty members of our program consider your insubordination, in attending the meeting without permission and your abandonment of patient care responsibilities, serious breaches of your professional obligations to the program, your colleagues, and our patients. Given the irresponsible and serious nature of your actions, the faculty is quite concerned about your well-being and feels that, at this point, you are not able to continue in the program until you have received a thorough assessment by the Committee for Physician Health. This decision is based on your recent behavior and on your repeated claims of illness as well as your prior allegations of radiation exposure and your reaction to expert opinions on this matter. As of the date of this letter, you are suspended from any further clinical and educational activities within our training program until further notice.

Earlier this summer, the Committee on Physician Health had recommended that you receive a full evaluation from Dr. Igor Janke as a part of their recommendations to the Medical Director after their initial evaluation. It is my understanding that a full evaluation and follow-up has never taken place. In order to return to your activities within the training program, you must undergo a full evaluation from Dr. Janke and must be cleared by the Committee on Physician Health prior to resuming your duties as a resident.

I expect that you will contact Dr. Janke as soon as possible to schedule this evaluation. Once you are evaluated, the Physician Health Committee will receive a report from Dr. Janke and will then provide an updated recommendation to the Medical Director and myself. The program will continue our previous policy of covering the costs of the evaluation phase of your care from Dr. Janke. Given your previous non-compliance with this recommendation, please note that failure to comply with this request in a reasonable time frame will result in your termination from the program.

(80)

App-E16

The Ohio State University
Office of Human Resources, Archer House
Columbus, OH 43210-1156

Pay Group:	M01-Salaried Exempt	Advice #:	2837540
Pay Begin Date:	10/01/2002		
Pay End Date:	10/31/2002	Advice Date:	10/31/2002

Lisha Fan
4426 Egg Ct, Apt A
Dublin, OH 43017

Employee ID: [illegible]
Department: 25900-Radiology
Location: Means Hall
Job Title: Clinical Instructor House Staf
Job Rate: $3,657.00 Monthly

TAX DATA:	Federal	OH State
Filing Status:	Married	Married
Allowances:	3	3
Addl. Pct:		
Addl. Amt:		

[illegible]

	------ Current	------		------ YTD	------
Description	Rate	Hours	Earnings	Hours	Earnings
Regular			954.00	1,608.00	32,745.00
Sick Leave Adjustment - Add	21.10	0.00	0.00	0.00	0.00
Total:		0.00	954.00	1,608	32,745.00

Description	Current	YTD
Fed Withholding	0.00	1,943.98
Fed FICA Med Hospital Ins / HI	11.52	453.83
OH Withholding	3.42	935.91
OH COLUMBUS Withholding	19.26	656.58
Total:	34.20	3,960.30

[illegible]

Description	Current	YTD
University Prime Care	128.50	730.84
ARP STRS/DIO	88.72	3,045.28
Parking	39.39	367.00
Total:	256.61	4,143.12

Description	Current	YTD
Total:	0.00	0.00

Description	Current	YTD
Group Life*	6.96	84.56
*Taxable		

[illegible]

C	954.00	706.15	34.20	256.61	660.99
Y	32,745.00	28,253.66	3,960.30	4,576.00	24,208.62

[illegible]

TD Balance:		YTD Balance:	43.3	YTD Balance:	176.0

MESSAGE:

THE OHIO STATE UNIVERSITY

Date: 10/31/2002

Advice No.
2837540

eposit Amount: $660.99

r The
ccount(s) Of LISHA FAN
4426 Egg Ct, Apt A
Dublin, OH 43017

Location: Means Hall

Account Type	Account Number	Deposit Amount
Checking	24554426	$660.99
Bank Of Boston		
Total:		$660.99

NON-NEGOTIABLE

App-E17 (a)

Reinhard A. Gahbauer M.D. October 22, 2002

Professor and Director
Radiation Oncology
300 West 10th Avenue
Columbus, OH 43210

Dear Dr. Gahbauer:

I had sent a letter and asked Dolly to hand it to you yesterday. That letter was response to your letter of October 8, 2002. I stated that I would like to appeal that the decision regarding suspension by you.

I am asking you again to kindly schedule the hearing as soon as possible and let me know of the time and place of the hearing.

In a matter as serious as this one representation by my attorney, Charleston C.K. Wang is appropriate and necessary.(hand writing-my attorney will be available tomorrow, Oct. 23, or Oct.25. Please reply to me in writing)

I can be reached by pager at 614-730-6156 or by phone 614-291-7911.

Sincerely,

Lisha Fan M.D.
PGY-5
4th year Radiation Oncology Resident
2632 Aschinger Blvd
Columbus, OH 43212

Cc:Dr. Spigos, Dr. Mekhjian, Dr. Thomas, Dr. Pariser, Bob Holder, Esq.
Charleston C.K. Wang, Esq.

10-22-02 12:22 I received letter from Dr. Fan for Dr. Gahbauer Cathy Fiasconi

App-E17 (b)

November 2, 2002

Dear Dr. Gabauer,

Thank you for arranging the hearing on October 30, 2002.

However I would like to readdress the issues, brought up by Mr. Holder's letter on October 29, I have discussed during the hearing.

First of all, Mr. Holder stated in his letter, and I quote: "Dozens of faculty and resident physicians – in addition to countless patients have been involved in procedures similar to Dr. Fan's without event." This statement is false, because as I understand it to the best of my knowledge, three out of the four attending doctors, Dr. Grecula, Dr. Bauer and yourself had state that you have not done any interstitial implant during my residency that I have completed. Furthermore, I have only come across one case in all of my three years, in which a patient have received interstial inplant in the tongue with18 catheters, with Iridium 192, at 100 cGy/hour dose rate. I don't know where Mr. Holder got his statistics, but he has not provided any proof to back up what he said.

Also, in his letter, Mr. Holder proclaimed that my request for an elective rotation in Massachusetts was denied. I would like to clarify that my request was not initially denied, but that I was allowed to go only I was to wait for an in-service exam report to finalize the decision.

Mr. Holder furthermore addressed my failure to attend professional conferences in his letter. I don't know of which professional conference he speaks, but I have attended all of my professional meetings throughout my residency, as it can be seen in my evaluations.

It is also accused of me in the letter written by Mr. Holder that I never "seriously pursued" my radiation exposure situation. I am sure that you remember that I have been very adamant in trying to bring attention to this exposure problem since May of this year in meetings and discussions with the faculty and staff. Mr. Holder also said that I inquired about doing a brachytherapy rotation in Massachusetts while I was sick due to radiation exposure in Boston, which is false since I did not a thing of the sort.

Furthermore, Mr. Holder in his proclaims in his letter that I was granted permission from you to go to the Kentucky conference in August. But according to my files, this is not true. I have the August 6 e-mail you sent to me refusing me of the permission of attendance and also you have arranged the meeting to make me to see Dr. Pariser and Dr.Janke on Aug. 16, 2002. He also made me sound as if I made up illness excuses before and after the conference in Kentucky, when it was obvious that I had been suffering from stress ulcer causing by our program and you that constance pressure and manipulations on me since this radiation exposure event. My illness was diagnosed by my physicians at Boston and can been seen in the sick notes I have sent to you.

As for the problems surrounding the ASTRO meeting, Mr..Holder made me sound like as if I am irresponsible, and have no regards for the authority, when I have stated in each of my four letters to you as to the vital importance of my attendance at the meeting, whether or not I am granted permission. As to my inability to find any one to cover my call schedule was because the majority of the residents (two 3rd year and one 4th year residents)were at attendance of the ASTRO meeting, and only one resident was left behind, and he was unable to cover my schedule.

Lastly, to address my exceeded vacation and sick day issue, according to me calculations I have not violated any allowances. I have only taken the period between August 13-20, and September 3-11, including the weekends and holidays.

I am writing all of this to explain every single false accusation made of me in Dr. Holder's letter on October 29,

2002. Also to ask for the reinstatement of my residency in seven days as it was said based on our agreement.
Thank you for your time.

Sincerely yours,

Lisha Fan, M. D.
PGY-5
4th year resident of Radiation Oncology
PS:
I got a job offer as a Radiation Oncologist at one of the University Hospital, Located at east coast region, on November 1, 2002. They have my resident evaluation of the past three years and three months. Also, they expect me to start my job at July, 2003.

Cc: Office of legal Affairs
Virginia M. Trethewey, Esq. University General Counsel
Dr. Spigos, Dr. Mahkjian, Dr. Thomas, Robert L. Holder Esq.
Charleston C. K. Wang Esq.

App-E17(e)

OHIO STATE
HEALTH SCIENCES CENTER

Office of Health Sciences

200 Meiling Hall
370 West 9th Avenue
Columbus, OH 43210-1238

Phone: (614) 292-7755
FAX: (614) 688-8644

ⓥ

October 29, 2002

Charleston Cheng-Kung Wang, Esq.
The Wanglaw Building
6924 Plainfield Road
Cincinnati, OH 45236-3799

RE: DR. FAN

Dear Mr. Wang:

The Radiation Oncology residency evaluation committee will meet on October 30, 2002 at 4:30 p.m. in room 087 of the Arthur G. James Cancer Hospital and Richard J. Solove Research Institute, in order to consider Dr. Fan's request for a hearing.

I am in receipt of your last correspondence dated October 23, 2002. My response will be brief.

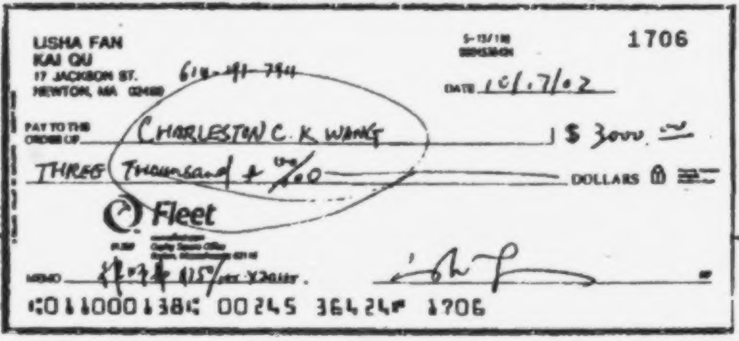
The Ohio State University, and especially Dr. Gahbauer, have seriously and thoroughly investigated Dr. Fan's claim of exposure. Dr. Gahbauer personally confirmed with leading physician scientists that the procedures followed at OSU are appropriate and offer a protective environment. Dozens of faculty and resident physicians – in addition to countless patients have been involved in procedures similar to Dr. Fan without event.

Dr. Fan's inability or unwillingness to understand the science of radiation, as it pertains to her training program, is, however, troubling.

Even more troubling is Dr. Fan's behavior surrounding her departure from her training program responsibilities – both following the alleged exposure and with regards to her attendance at a professional conference.

Prior to any claim of exposure Dr. Fan had meetings with OSU officials, both within and without the training program requesting an extended elective rotation in Massachusetts. These requests were denied.

It seems rather transparent that the allegation of exposure – which Dr. Fan never seriously pursued (and refused to participate in appropriate tests to document) – was used as a pretext to return to Massachusetts. While she was there, (alleging concern over



USHA FAN
KAI QU
17 JACKSON ST.
NEWTON, MA 02458

617-[illegible]-7944

5-13/110

1706

DATE 10/7/02

PAY TO THE ORDER OF CHARLESTON C. K. WANG $ 3000.00

THREE Thousand + 00/100 DOLLARS

Fleet

MEMO [illegible] 115/[illegible]

⑆011000138⑆ 00245 36424⑈ 1706

App-E18

750 East Adams Street
Syracuse, NY 13210

Department of Radiation Oncology

Chung T. Chung, M.D., F.A.C.R.
Professor and Chairman

State University of New York
Upstate Medical University
COLLEGE OF MEDICINE

Tel 315.464.5276
Fax 315.464.5939

www.upstate.edu

Ex. 18

[redacted]

Lisha Fan, M.D.
2632 Aschinger Boulevard
Columbus, OH 43212

Dear Dr. Fan:

I am pleased to confirm the details of your interview for a faculty position in the Department of Radiation Oncology at SUNY Upstate Medical University on Friday, November 1, 2002. I understand that you and your husband will be driving to Syracuse and expect to arrive very late on October 3[redacted]

A reservation for arrival[redacted]ure November 3 has been made at the [redacted]07), 801 University Ave., Syracuse, 315/475-3000 (shown at the top of the map in the enclosed Guide for Visitors).

A copy of your tentative interview schedule is enclosed, along with some brochures for informational purposes and an Affirmative Action Data Sheet. Please complete the Data Sheet and return it to the Office of Diversity and Affirmative Action in the enclosed postage-paid envelope.

Susan Kiehl will be your contact in my absence and she'll take care of coordinating your visit. Dinner arrangements for Friday will be discussed with you that day. In the meantime, if you have any questions, please feel free to contact me at 315/464-5929.

[illegible] Nov. 7, 2002 Thursday.

Sincerely,

Maureen

Maureen L. Knopp, for
Chung T. Chung, M.D., FACR, FACRO
Professor and Chairman
Department of Radiation Oncology

Enclosure

Colleges of: Medicine • Graduate Studies • Health Professions • Nursing • University Hospital

Improving the health of the communities we serve through education, biomedical research, and health care

App-E18

[redacted]

LISHA FAN, M.D.
Faculty Candidate
Department of Radiation Oncology

Ex. 18.

Friday, November 1, 2002

10:00 a.m.	✓	**Chung T. Chung, M.D., FACR, FACRO** Professor and Chairman Tour of Department
10:45 a.m.	✓	**Jeffrey A. Bogart, M.D.** Associate Professor & Program Director
11:45 a.m. (at Hill)	✓	**Jesse Aronowitz, M.D.** Associate Professor Lunch with Dr. Aronowitz
1:30 p.m.		**Seung Shin Hahn, M.D.** Professor
✓ 2:15 p.m.		**Surjeet Pohar, M.D.** Assistant Professor
3:00 p.m.	✓	**Daniel A. Bassano, Ph.D., FAAPM**, Professor & Director **Lizhong Liu, Ph.D.**, Assistant Professor **Satish C. Prasad, Ph.D., FAAPM**, Professor Radiation Physics Section
✓ 4:00 p.m.		**Peter J. Hahn, Ph.D.**, Associate Professor & Director Radiation Biology Laboratory
4:30 p.m.		Wrap-up with Dr. Chung

App-E19(a)

November 6, 2002
The American Board of Radiology
Office of the Executive Director
5441 East William Blvd
Tucson, AZ 85711

To Whom It May Concern
RE: Transfer Program

I am a fourth year radiation oncology resident at the James Cancer Hospital of Ohio State University. I have had a radiation exposure incident on May 15, 2002, at my current post, and since this occurrence I have been treated differently by my program director and the rest of the staff. Thus due to my current situation, I would like to transfer to another program, at another hospital, to complete my residency.
Please find the attached information. Please kindly review them and advice me on the procedures that I should go through to achieve a successful transfer.

Sincerely,

Lisha Fan M.D.
4th year resident of Radiation Oncology
PGY-5
2632 Aschinger Blvd
Columbus, OH 43212
Fax: 614-291-7911

App-E19(b)

The American Board of Radiology

Diagnostic Radiology   Radiation Oncology   Radiologic Physics

Robert R. Hattery, M.D., Executive Director

NOV 20 2002

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Milwaukee, Wisconsin
Steven A. Leibel, M.D., Vice President
New York, New York
Philip O. Alderson, M.D., Secretary-Treasurer
New York, New York

Assistant Executive Directors
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Richmond, Virginia
Lawrence W. Davis, M.D., Radiation Oncology
Atlanta, Georgia
Bhudatt R. Paliwal, Ph.D., Radiologic Physics
Madison, Wisconsin

Diagnostic Radiology
Philip O. Alderson, M.D.
New York, New York
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Miami, Florida
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Ann Arbor, Michigan
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Chicago, Illinois
Anthony V. Proto, M.D.
Richmond, Virginia
Anne Roberts, M.D.
La Jolla, California
Robert J. Stanley, M.D.
Birmingham, Alabama
Michael A. Sullivan, M.D.
New Orleans, Louisiana
Kay H. Vydareny, M.D.
Atlanta, Georgia
James E. Youker, M.D.
Milwaukee, Wisconsin

Radiation Oncology
Jay S. Loeffler, M.D.
Boston, Massachusetts
Richard T. Hoppe, M.D.
Stanford, California
David H. Hussey, M.D.
San Antonio, Texas
Larry E. Kun, M.D.
Memphis, Tennessee
Steven A. Leibel, M.D.
New York, New York
H. Rodney Withers, M.D.
Los Angeles, California

Radiologic Physics
William R. Hendee, Ph.D.
Milwaukee, Wisconsin
Bhudatt R. Paliwal, Ph.D.
Madison, Wisconsin
Stephen R. Thomas, Ph.D.
Cincinnati, Ohio

ill

November 20, 2002

Ex. 19.

Lisha Fan, MD
Division of Radiation Oncology
Arthur G. James Cancer Hospital
300 West 10th Avenue
Columbus, OH 43210

Dear Dr. Fan:

I have your letter of November 6, 2002 addressed to the American Board of Radiology concerning transferring to another radiation oncology program. To do so, you would need to find a program that would accept you for the remainder of your training and have the permission of your current program director to transfer. The Board does not assist residents in finding training programs.

Sincerely yours,

L W Davis

Lawrence W. Davis, MD
Assistant Executive Director
Radiation Oncology

LWD:pam

App-E19 (c)

Ms. Linda Thorsen: November 8, 2002
Executive Director
Radiation Oncology Resident Review Committee
ACGME

Dear Ms. Thorsen:

RE: Transfer program

I am a fourth year radiation oncology resident at the James Cancer Hospital of Ohio State University. On May 15, 2002, I have had a radiation exposure incident during the low dose rate Brachytherapy procedures, I was denied to use lead shielding for protection.

At my current post and since this occurrence I have been treated differently by my program director and rest of the staff. Thus due to my current situation, I would like to transfer to another program with your assistant and advice, to complete my residency.

I have successfully completed thirty nine months and eleven days of the radiation oncology training and am only about 8 and ½ months from completion of training, as it can be seen in my evaluations.

Please find the attached information (my medical records, resident evaluations and letters). Please kindly review them and advice me on the procedures that I should go through to achieve a successful transfer.

Sincerely,

Lisha Fan M.D.
4th year resident of Radiation Oncology PGY-5
2632 Aschinger Blvd
Columbus, OH 43212
Fax/phone: 614-292-7911

App-E20 (a)

November 8, 2002
Dear Mr. Gould:
RE: Radiation Exposure

I am a 4th year radiation oncology resident at the James Cancer Hospital of Ohio State University. On May 15, 2002, I have had a radiation exposure incident during the low dose rate Brachytherapy procedures, I was denied to use lead shielding for protection. Since this occurrence, I have been treated differently by my program director and rest of the staff.

I am writing this letter to you to seek help.

Please find the attached information (my medical records, and letters).

Please kindly review them and advice me.

Thank you for giving my situation your kindly regards
Sincerely,

Lisha Fan, M.D.
4th year resident of radiation oncology
PGY-5
My phone/fax:
614-291-7911

App-E20(b)

OHIO DEPARTMENT OF HEALTH

246 North High Street
Post Office Box 118
Columbus, Ohio 43266-0118
Telephone: (614) 466-3543

Bob Taft
Governor

J. Nick Baird, M.D.
Director of Health

Ex. 20

December 19, 2002

Lisha Fan, M.D.
2132 Aschinger Blvd.
Columbus, Ohio 43212

Re: Allegation A02-07

Dear Dr. Fan,

This is in reference to your telephone conversation on November 8, 2002 with the Nuclear Regulatory Commission. Your concerns were forwarded to Mark Light, of the Ohio Department of Health, Bureau of Radiation Protection (ODH/BRP). The Ohio Department of Health, Bureau of Radiation Protection has completed its action in response to your concern related to radiation safety practices in the department of radiation oncology at the Ohio State University. The enclosure to this letter describes how your concerns were reviewed.

We have performed an investigation at the Ohio State University to determine if your concerns were substantiated. During the investigation, two inspectors from the Ohio Department of Health, Bureau of Radiation Protection reviewed procedures, and representative records, and interviewed personnel involved in the radiation therapy program. The investigation was focused on the events that occurred during a Ir-192 radiation therapy procedure performed on May 15, 2002. You alleged that proper shielding was not provided to you during this procedure.

Thank you for informing us of your concerns. Based on the information received to date, ODH/BRP can not confirm your allegation. This report concludes our investigation of this matter. Should you have additional questions, or if I can be of further assistance in this matter, please call me at (614)-644-2727.

Sincerely,

Roger L. Suppes

Roger L. Suppes
Chief, Bureau of Radiation Protection
Enclosure: Report

An Equal Opportunity Employer/Provider

App-E21 (a)

November 13, 2002 Fax: 614-644-3133

Mr. Michael Rea
Assistant Chief
Dept. of Commerce
Laws OSHA PERRP
50 West Broad St. 29th Floor
Columbus, OH 43215

Dear Mr. Rea:
RE: Radiation Exposure (I am being harassed, intimidated and discriminated by my program)

I reported to you and Pat Roberts, regarding the radiation exposure issue on Nov. 12, 2002.
I am a 4th year radiation oncology resident at the James Cancer Hospital of Ohio State University. On May 15, 2002, I had radiation exposure incident during the low dose rate Brachytherapy procedures. I was denied to use lead shielding for protection. Since this occurrence, I have been treated differently by my program director and rest of the staff.
I am writing this letter to you to seek help.
Please find the attached information (my medical records, resident evaluations, oncall schedules and letters) Please kindly review them and advice me and help me.
Thank you for giving my situation your kindest regards.
Lisha Fan, M.D.,
4th year Radiation Oncology resident (PGY-5)

2632 Aschinger Blvd. *or* 17 Jackson St.
Columbus, OH 4312 Newton, MA 02459
614-291-7911 617-964-0047

App-E21(b)

Ohio Department of Commerce
DIVISION OF LABOR AND WORKER SAFETY
Public Employment Risk Reduction Program
50 West Broad Street
29th Floor
Columbus, Ohio 43215
1-800-671-6858 FAX: 614-644-3133
www.com.state.oh.us

Bob Taft
Governor
Gary C. Suhadolnik
Director

Ex. 21

November 22, 2002

Ohio State University Hospital
Dr. Hagop Mekhjian, Associate Vice President
130 Doan Hall, 410 West 10th Avenue
Columbus, OH 43210

Re: Confirmation of Complaint; Report Number: 020897C

Dear Dr. Mekhjian:

Under the provisions of Section 4167.10(B) of the Ohio Revised Code, an employee(s) complaint, alleging violations of occupational safety and health standards, was received in this office. The complainant(s) alleges violations of occupational safety and health standards at Ohio State University Hospital. Specifically, the complainant(s) are stating:

Location: At the Arthur G. James Cancer Hospital, Radiation Oncology
- Failure to provide protection from over exposure to x-rays during brachytherapy procedures.

You are required to respond to the alleged violation(s) and correct any actual violation(s) or danger within 30 days of this notice. No response to the alleged violations(s) is grounds for an inspection by a compliance inspector of this office. Please reference the report number listed above when responding to the alleged conditions.

Any questions may be discussed by calling this office at (614) 644-2246 or (800) 671-6858 during the hours of 8:00 A.M. and 4:45 P.M., Monday through Friday. We look forward to working with you toward maintaining a safe and healthful environment for your employees.

Sincerely,

Michael F. Rea

Michael F. Rea, Assistant Chief
Division of Labor and Worker Safety
Public Employment Risk Reduction Program

MFR:par

cc: Complainant(s)

App-E22 (a)

November 20, 2002 Fax: 312-464-4098

Dear Marsha:

It was very nice talking to you this afternoon.

As we had discussed and agreed that my program director had violated the RRC regulation, such as oncall schedule, resident evaluation procedure unethical contact my each treating physician and did not provide safety environment for the low dose rate brachytherapy procedure.

I do hope with your help and advice that I may able to complete my residency.

Please find the attached copy of the letter which I am responding to Dr. Spigos for the second appeal meeting.

Thank you for your time and help.

Sincerely,

Lisha Fan, M.D.,
4th year Radiation Oncology resident (PGY-5)
2632 Aschinger Blvd. *or* 17 Jackson St.
Columbus, OH 4312 Newton, MA 02459
614-291-7912 617-964-0047

App-E22(b)

ACGME

Accreditation Council
for Graduate Medical
Education

515 N. State St., Suite 2000
Chicago, IL 60610
(312) 464-4920
FAX: (312) 464-4098

November 25, 2002

Ex 22

Reinhard A. Gahbauer, MD
Professor and Director
Radiation Oncology
300 West 10th Avenue
Columbus, OH 43210

Dear Dr. Gahbauer:

Lisha Fan, MD, has filed a complaint concerning the Radiation Oncology program at Ohio State University in Columbus, Ohio.

In order that we may have both sides of the story, please provide a detailed response from your perspective to the allegations, as well as any documentation that would demonstrate compliance.

The following Institutional and Program Requirements were purportedly violated by the Ohio State University Radiation Oncology program:

Institutional Requirements II.D.5.a.

> *Appropriate security and personal safety measures must be provided to residents in all locations including but not limited to parking facilities, on-call quarters, hospital and institutional grounds, and related clinical facilities (eg, medical office building).*

Dr. Fan alleges that during a brachytherapy procedure she was denied the use of lead shielding and became ill due to radiation exposure.

Program Requirements for Residency Education in Radiation Oncology V.A.4

> *While the actual number of hours worked by residents may vary, residents must have sufficient off-duty time to avoid undue fatigue and stress. It is required that residents be allowed to spend, on average, at least 1 full day out of 7 away from the hospital and not be assigned on-call duty in the hospital more frequently than every third night. The program director is responsible for monitoring on-duty assignments for residents to ensure adherence to this recommendation.*

Member Organizations

[illegible] Board of Medical [illegible]
[illegible]
Church Street
[illegible], IL 60201

[illegible] Hospital Association
[illegible]
[illegible], IL 60606

[illegible] Medical Association
[illegible] State Street
[illegible], IL 60610

[illegible] of American
[illegible]
[illegible], D.C. 20037

[illegible] Medical
[illegible]

Terrace
60044-3252

App-E23

OFFICE OF THE PRESIDENT

Ex. 23

November 26, 2002

Dr. Lisha Fan
2634 Aschinger Boulevard
Columbus, OH 43212-4618

Dear Dr. Fan:

I am writing to inform you that I am in receipt of the material sent by you on November 8, regarding your complaint related to radiation exposure. As this issue is being reviewed by the Office of Legal Affairs, my response will only assure you about possession of the papers.

Sincerely,

Karen Holbrook

Karen A. Holbrook
President

ad

c: Ms. Virginia M. Trethewey, executive assistant to the president and general counsel

The Ohio State University • 205 Bricker Hall • 190 North Oval Mall • Columbus, OH 43210-1357
Telephone: (614) 292-2424 • Fax: (614) 292-1231

App-E24

Robert R. Hattery, M.D November 27, 2002
Executive Director
The American Board of Radiology
Office of the Executive Director
5441 East William Blvd
Tucson, AZ 85711

RE: 1. Radiation Exposure (I am being harassed and
discriminated by my program)
2. Transfer program

Dear Dr. Hattery:

I am a 4th year radiation oncology resident at the James Cancer Hospital of Ohio State University. On May 15, 2002, I have had a radiation exposure incident during the low dose rate Brachytherapy procedures, I was denied to use lead shielding for protection. At my current post and since this occurrence I have been treated differently by my program director and rest of the staff. Thus, due to my current situation. I would like to transfer to another program with your assistant and advice to complete my residency.

I have successfully completed thirty nine months and eleven days of the radiation oncology training and am only about 8 and ½ months from completion of training, as it can be seen in my evaluations.

Please find the attached information (my medical records, resident evaluations, oncall schedules and letters). Please kindly review them and advice me on the procedures that I should go through to achieve a successful transfer.

Also, I had sent a letter and information to your office on November 6, 2002, and spoke with Lori Body twice regarding this issue.

Thank you for giving my situation your kindest regards.
Have a good Holiday!
Sincerely,

Lisha Fan, M.D
4th yea resident of radiation oncology (PGY-5)
2632 Aschinger Blvd Columbus, OH 43212
phone/fax: 614-291-7911
OR. 17 Jackson St. Newton, MA 02459
phone: 617-964 0047

FAX

Ex. 25.

To: xxxxxx
Company:
Fax: 1-614-291-7911
Phone:

From: BWC (OHIO)
Fax:
Phone:
E-mail:

NOTES:

Call BWC, 614-644-6292. about fax #, 1-877-520-6446

Bill

Date and time of transmission: Friday, December 06, 2002 12:37:16 PM
Number of pages including this cover sheet: 02

App-E25

BWC
Better Workers' Compensation
Built with you in mind.

BOB TAFT, GOVERNOR **JAMES CONRAD, ADMINISTRATOR**

LISHA FAN
17 JACKSON ST
NEWTON CENTER MA 02459-2362

12/17/2002

Dear Customer:

On behalf of the Bureau of Workers' Compensation (BWC), let me first say I am sorry to hear about your injury. I realize how difficult a time this can be. I also know our system may seem intimidating, but with help from your BWC claims specialist (CSS) and our e-business Web site, www.ohiobwc.com, you'll find BWC is less complicated than you might expect.

Your claim number, managed care organization and CSS are listed on the cards attached at the bottom of this letter. Please remove one of them and keep it with you. Use it whenever you contact us, your doctor or access our Web site. The enclosed brochure includes more information.

Your CSS will manage your claim throughout the process. So contact your CSS with information such as, whether you expect to be off work more than seven days or you are offered payment for your injury by anyone else. You can also check your claim status, update your address and file forms online at your convenience. It's easy, just log on to www.ohiobwc.com and follow the instructions.

It is important to me that every Ohio injured worker gets the care and service he or she deserves for a quick, safe recovery and return to work. Together, we're building a better workers' compensation system.

Sincerely,

James Conrad
James Conrad, Administrator/CEO
CC:
MICHAEL A BURGIN MD

To access your claim at www.ohiobwc.com:
1. ***Click Injured workers;***
2. ***Log on;***
3. ***Follow the directions to create a new account***

BWC [illegible]
INJURED WORKER: LISHA FAN
CLAIM NUMBER: 02-875242
INJURY DATE: 08/15/2002
CSS: CRYSTAL J
PHONE: 614 728-8874 FAX: 614 728-5547
SERVICE OFFICE: COLUMBUS NORTH
EMPLOYER NAME: THE OHIO STATE UNIVERSITY
HOSPITALS EAST
MCO NAME: CAREWORKS
MCO PHONE NO: (888) 627-7586
PRINTED ON: 12/17/2002

BWC [illegible]
INJURED WORKER: LISHA FAN
CLAIM NUMBER: 02-875242
INJURY DATE: 08/15/2002
CSS: CRYSTAL J
PHONE: 614 728-8874 FAX: 614 728-5547
SERVICE OFFICE: COLUMBUS NORTH
EMPLOYER NAME: THE OHIO STATE UNIVERSITY
HOSPITALS EAST
MCO NAME: CAREWORKS
MCO PHONE NO: (888) 627-7586
PRINTED ON: 12/[illegible] 2002

[illegible]
Called cathy about 16 pages of fax report & go through that with me
so I can re-fax to her which was missing
and report to her the employer name was incorrect. should be
James cancer hospital

[illegible]
17/05/06

OHIO STATE
JAMES
CANCER
HOSPITAL
AND
SOLOVE
RESEARCH
INSTITUTE

Arthur G. James Cancer Hospital and
Richard J. Solove Research Institute
Division of Radiation Oncology

300 West 10th Avenue
Columbus, OH 43210

Phone: (614) 293-8415
FAX: (614) 293-4044
Patient Scheduling: (614) 293-3241
Web Site Address:
http://www-radonc.med.ohio-state.ed

Ex. 25

January 15, 2003

Ms. Teri Weeks, CWCP
Claims Manager
Integrated Disability and Unemployment Program
Archer House
2130 Neil Avenue
CAMPUS

RE: Lisha Fan
BWC# 02-875242

Dear Ms. Weeks:

In response to your request regarding the claim of Dr. Fan, I attach, fax and send to you a copy of the evaluation of the incident by the Ohio Department of Health. I also include a page putting the radiation quantities in perspective for your information and a page from the government web site indicating at what level of radiation any health effects might be expected. The exposure Dr. Fan received was 44 millirems, measured by badge, consistent with the totally independent measurement of the exposure at bedside of the patient, and very comparable to the typical radiation exposure experienced by health care workers involved in this kind of work.

In summary, I believe that Dr. Fan has not suffered any injury or adverse health effects from the alleged incident. Please let me know if I can provide you with any additional information.

With best regards,

Yours sincerely,

Reinhard A. Gahbauer, M.D.
Professor and Director
Radiation Oncology

Enclosures

NCI
CCC
A Comprehensive Cancer Center Designated by the National Cancer Institute

The James... The Next Generation of Hope

App-E26(a)

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CANCER CENTER

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Claudia Perez-Tamayo, M.D.
Jorge A. Wong, M.D.
Elshami Elamin, M.D.
Muzaffar Iqbal, M.D.

Administration
Billing & Insurance
2121 Crawford Place
P. O. Box 258
Salina, KS 67402-0258
785-823-0800
785-823-0898 fax

730 Medical Center Dr.
Newton, KS 67114
1-800-569-6110
316-283-1141
316-283-1182 fax

1150 South Clifton
Wichita, KS 67218
316-942-7016
16-942-4681 fax

431 West New Hampshire
Osborne, KS 67473

DATE: November 18, 2002

TO: Dr. Lisha Fan

FROM: Ann M. Fell, RHIA, Administrator
Central Care, P.A.

Ex. 26

RE: Electronic Ticket

Dr. Fan,

Please find the electronic ticket for your visit to Kansas on December 6-8. I have included a tentative agenda for the visit as well as an Emporia community packet for your review. We look forward to meeting with you soon. Please let me know if I can be of any assistance prior to our visit. Thank you.

App-E26 (b)

Ex. 26

Tentative Agenda for Dr. Lisha Fan's Interview

FRIDAY, December 6, 2002
10:11 pm Arrive in Wichita, Delta Airlines flight # 5493
Take Shuttle to Airport Hilton.

Hotel accommodations at Airport Hilton, (316) 945-5272
2098 Airport Rd, Wichita, KS. Confirmation # 3152951827

SATURDAY, December 7, 2002
8:30 am Alfredo Lopez to pick up Dr. Fan and Mr. Qu at the hotel and drive to Emporia.

1201 west 12th Ave.
Emporia KS-6680

10:30 am Meet with Mr. Terry Lambert, CEO of Newman Regional Health, Emporia, KS (620-343-6800 x 2601). Mr. Lambert will give tour of the hospital and also show the cancer center floor plans.

12:00 pm LUNCH with Dr. CPT, Alfredo, Dr. Chester Stone, medical oncologist, and Dr. John Kosko, urologist at Shanghai Chinese Restaurant, 2002 W. 6th Ave. (620)342-4888.

1:30 – 3:30 pm?? Real Estate and Community Tour with Patrick Werly of Barrett, Eusey & Associates (620) 341-9757. Mr. Werly to pick up Dr. Fan and Mr. Qu at the Shanghai Restaurant. *****Mr. Werly will be contacting you to discuss your housing needs, price range, etc.***

3:30 pm Drive to Newton to tour our department there.

7:00 pm Dinner at Thai Tradition, 650 N. Carriage Pkwy, Ste 120, 316-687-1500. Reservations made for 8 under "Central Care". Those attending include Dr. CPT, Alfredo, Dr. Wong and Grace, Dr. Elamin and Ximena, Dr. Fan and Mr. Qu.

SUNDAY, December 8, 2002
8:00 am Dr. Wong to meet up Dr. Fan and Mr. Qu at hotel for breakfast.

11:00 am Return flight from Wichita, Delta flight # 5492.

App-E27

Demitrios G. Spigos, M.D. December 11, 2002
Professor and Chair
Department of Radiology
605 Mean Hall
1654 Upham Drive
Columbus, OH 43210-1250
RE: 1. Radiation Exposure 2. Suspension 3. Transfer program.

Dear Dr. Spigos:

First, I would like to know that the suspension will be end by when.
On May15, 2002. I have had a radiation exposure incident during the low dose rate brachetherpy procedure, I was denied to use lead shielding for protection, since this occurrence, I have been treated differently by my program director and rest of the staff.

As for the problems surrounding the ASTRO meeting, I have asked on numerous accounts regarding my attendance at this meeting, and I had planed attending this meeting almost two years ago. I am entitled this benefit as it was posted on our web side and I quote "support for a national meeting in the 3rd or 4th year". Attending the ASTRO meeting is part of the education during my residency and I should be treated equally as my colleagues, they were granted education time to attend the ASTRO meeting. However, my program had violated RRC regulation, put me on two weeks on call during that period, because I went to the same meeting, I then was suspended.

I feel strongly that this environment is not suitable for me to complete my residency; I would like to ask to transfer to another program.

Please respond to me in writing as soon as possible.
Thank you for your time.
Have a wonderful Holiday season!
Sincerely,
Lisha Fan, M.D.
4th year radiation oncology resident PGY-5
17 Jackson St. Newton, MA 02459
Cc: Dr. Gahbauer, Dr. Mekhjian and ACGME

EEOC Form 161 (10/96)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

COPY

DISMISSAL AND NOTICE OF RIGHTS

To: Lisha Fan
17 Jackson St.
Newton, MA 02459

From: Equal Employment Opportunity Commission
Skylight Office Tower
1660 W. Second Street, Suite 850
Cleveland, OH 44113-1412

Ex. 28.

[ ] *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR § 1601.7(a))*

Charge No.	EEOC Representative	Telephone No.
220A300733	Attorney of the Day	(216) 522-7445

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

[ ] The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

[ ] Your allegations did not involve a disability that is covered by the Americans with Disabilities Act.

[ ] The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

[ ] We cannot investigate your charge because it was not filed within the time limit required by law.

[ ] Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.

[ ] While reasonable efforts were made to locate you, we were not able to do so.

[ ] You had 30 days to accept a reasonable settlement offer that afford full relief for the harm you alleged.

[X] The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

[ ] The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

[ ] Other *(briefly state)* ____________________

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS from your receipt of this Notice; otherwise, your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

Michael C. Fetzer / PD

Michael C. Fetzer, District Director

03 JUN 2003
(Date Mailed)

Enclosure(s)

cc: Mary Bean

App-E28

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Cleveland District Office

1660 West Second Street, Suite 850
Cleveland, OH 44113-1454
(216) 522-2001
TTY (216) 522-8441
FAX (216) 522-7395

U.S. Equal Employment Opportunity commission
cleveland District office
Tower City – Skylight office Tower
1660 west second ST. – Suite 850
cleveland, ohio 44113-1412.

Telephone Interview
January 8, 2003

Ex. 28

Lisha Fan
17 Jackson Street
Newton, MA 02459

AT: (617) 964-0047

Your scheduled appointment time to have a telephone interview with an Investigator concerning the possible filing of a charge of employment discrimination, and where appropriate, related counseling, is as follows:

DAY: ~~Thursday~~ Wednesday. **DATE: January 15, 2003** **TIME: 10:30 a.m.**

Please note that it is very important that you answer the questions completely, giving as much information as possible. ***Please be explicit in giving names, dates, etc. for all incidents you describe to the best of your ability.***

Please note that the intake appointment is normally scheduled for approximately 1 ½ hours. This amount of time is needed to insure that all intake processing and counseling can be completed. Therefore, please schedule your other appointments accordingly to permit you to keep this EEOC appointment.

If you have any questions or need to reschedule, please call me at (216) 522-7271 between the hour 8:15 a.m. to 4:15 p.m.

phone interview conducted on
1/15/2003. at 11:15am – 12:30pm.
national origin/ sex discrimination
Should be A cases.
retaliation.

Sincerely,

S. Austin

Ms. S. Austin
Investigator Support Assistant

OHIO STATE
JAMES CANCER HOSPITAL AND SOLOVE RESEARCH INSTITUTE

Arthur G. James Cancer Hospital and
Richard J. Solove Research Institute
Division of Radiation Oncology

300 West 10th Avenue
Columbus, OH 43210

Phone: (614) 293-8415
FAX: (614) 293-4044
Patient Scheduling: (614) 293-3241
Web Site Address:
http://www-radonc.med.ohio-state.edu

Ex. 29

December 17, 2002

Lisha Fan, M.D.
17 Jackson Street
Newton, MA 02459

Dear Dr. Fan:

The Appeals Committee unanimously agreed that the decision to suspend you from the program was appropriate. Your presentations to both Appeals Committees', and your recent letter to Dr. Spigos indicate that you have not realized the seriousness of your actions, nor have you taken any opportunity from us to remedy the situation.

Given your unwillingness to address or perhaps even comprehend the issues that forced us to suspend you, I see no other resolution but to terminate you from the Residency Program. Your termination is effective December 17, 2002.

Best regards,

Reinhard A., Gahbauer, M.D.
Professor and Director
Radiation Oncology

App-E30

Dr. Fan
Interview Schedule
March 3, 2003

Ex. 30

8:30 – 9:30	**James McIntyre, MD** **Director of Radiation Oncology**
9:30 – 10:30	**Eric Weber, MD** **Radiation Oncologist**
10:30 – 11:00	**Susan Shapiro, MD ??????** **Radiation Oncologist**

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2 pages

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Lisha Fan

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

__	I.	160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.	
✓	II.	195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.	*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
__	III.	110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.	
__	IV.	220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.	
__	V.	150, 152, 153.	

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES [✓ NO]

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES [✓ NO]

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

[✓ YES] NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

(PLEASE TYPE OR PRINT)
ATTORNEY'S NAME Lih Fan pro se
ADDRESS 17 Jackson St. Newton MA 02459
TELEPHONE NO. 617-964-0047

App-E31

S 44
Rev. 12/96)

CIVIL COVER SHEET

he JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required y law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use f the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I PLAINTIFFS

Lishe Fan

DEFENDANTS

Subir Nag
Reinhard Gahbauer
Nina Senisaani
Steven Marsh.
Andrew M. Thomas.
Connie Beaver
The Ohio State University medical center

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF ______
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT ______
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT
110 Insurance
120 Marine
130 Miller Act
140 Negotiable Instrument
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans (Excl. Veterans)
153 Recovery of Overpayment of Veteran's Benefits
160 Stockholders' Suits
190 Other Contract
195 Contract Product Liability

REAL PROPERTY
210 Land Condemnation
220 Foreclosure
230 Rent Lease & Ejectment
240 Torts to Land
245 Tort Product Liability
290 All Other Real Property

TORTS
PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☒ 360 Other Personal Injury [illegible]
PERSONAL INJURY
☐ 362 Personal Injury — Med. Malpractice
☐ 365 Personal Injury — Product Liability
☐ 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

CIVIL RIGHTS
☐ 441 Voting
☒ 442 Employment
☐ 443 Housing/ Accommodations
☐ 444 Welfare
☒ 440 Other Civil Rights

PRISONER PETITIONS
☐ 510 Motions to Vacate Sentence
HABEAS CORPUS:
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition

FORFEITURE/PENALTY
☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs.
☒ 660 Occupational Safety/Health
☐ 690 Other

LABOR
☒ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 740 Railway Labor Act
☑ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS — Third Party 26 USC 7609

OTHER STATUTES
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 810 Selective Service
☐ 850 Securities/Commodities/ Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes
☐ 890 Other Statutory Actions

. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

I. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☐ NO

II. RELATED CASE(S) IF ANY (See instructions): JUDGE ______ DOCKET NUMBER ______

6/17/03
SIGNATURE OF ATTORNEY OF RECORD
pro se.

R OFFICE USE ONLY

CEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

The Industrial Commission of Ohio

RECORD OF PROCEEDINGS

Claim Number: 02-875242 Claims Heard: 02-875242
LT-ACC-PE-COV
PCN: 2030371 Lisha Fam

Ex. 32

LISHA FAM
17 JACKSON ST
NEWTON CENTER MA 02459-2362

Date of Injury: 5/15/2002 Risk Number: 10003201-0
Manual Number:

This claim has been previously: DISALLOWED.

This matter was heard on 03/31/2003 before District Hearing Officer Andrew J. Klatt pursuant to the provisions of Ohio Revised Code Section 4121.34 and 4123.511 on the following:

IC-12 Notice Of Appeal filed by Injured Worker on 01/27/2003 from the order of the Administrator dated 01/17/2003.
Issue: 1) Injury Or Occupational Disease Allowance

Notices were mailed to the injured worker, the employer, their respective representatives and the Administrator of the Bureau of Workers' Compensation not less than 14 days prior to this date, and the following were present at the hearing:

APPEARANCE FOR THE INJURED WORKER: Injured Worker and Husband
APPEARANCE FOR THE EMPLOYER: Mr. Jones
APPEARANCE FOR THE ADMINISTRATOR: NA

The order of the Administrator, dated 01/17/2003, is vacated.

It is the order of the DHO that the FROI-1, filed 12/17/2002, is granted to the extent of this order.

It is the finding of the District Hearing Officer that:

The date of injury is 05/15/2002.

It is the finding of the District Hearing Officer, that the claimant sustained an injury in the course of and arising out of employment described as follows: Exposed to radiation on 05/15/2002 while assisting brachytherapy procedures.

It is the order of the District Hearing Officer that:

This claim is allowed for: "NEUTROPENIA SECONDARY TO RADIATION EXPOSURE".

Temporary total compensation is not presently payable as the injured worker received her full salary during the approximate 6 week period she was off work subsequent to the radiation exposure.

This order is based on: The 05/15/2002 emergency room report; the diagnoses and off work slips from Dr. Burgin and Dr. Komar; the treatment records of Dr. Komar; and a comparison of the blood test results from samples drawn 09/28/2001, 03/15/2002, 05/16/2002, 05/17/2002 and 05/20/2002.

All evidence in the record was reviewed and considered.

An Appeal from this order may be filed within 14 days of the receipt of the order. The Appeal may be filed online at www.ohioic.com or the Appeal

Moritz Communications

Ex. 33

Judge Graham Honored with Distinguished Jurist Award

March 11, 2004

COLUMBUS, Ohio - Columbus native and long-time federal judge, James L. Graham '62 received the William K. Thomas Distinguished Jurist Award on Thursday, March 11, 2004 at the Moritz College of Law. The presentation was part of the college's annual Judges' Day, an educational program designed especially for judges and their clerks.

The award, presented by the college's law alumni society, is given to a graduate whose personal integrity and commitment to fairness, freedom, and equality exemplify the highest ideals of the judicial system. It is named for the late William K. Thomas '35, a former federal judge in the Northern District of Ohio and the first recipient of the award.

The Hon. James L. Graham '62, center, was recognized with the William K. Thomas Distinguished Jurist Award on March 11, 2004 by the Moritz College of Law. William Bodoh '64 presented the award. Also pictured is Moritz Law Dean Nancy H. Rogers.

Graham is a double graduate of The Ohio State University, receiving both a bachelor of arts and a juris doctor degree. After graduating from the Moritz College, he spent 24 years as a trial lawyer, specializing in civil litigation, at the firm of Graham, Dutro & Nemeth. During that time, he wrote and lectured extensively on trial practice, tort law, and civil procedure. He also served as a member and as chair of the Ohio Board of Bar Examiners.

He was nominated by then-President Ronald Reagan for appointment to the federal judiciary and was confirmed as U.S. District Judge for the Southern District of Ohio in November of 1986. Last October, he was elevated to Chief Judge.

Previous recipients of the award, which was established in 2000, in addition to Judge Thomas, include: David A. Katz '57, U.S. District Court, Northern District of Ohio, and William T. Bodoh '64, U.S. Bankruptcy Court, Northern District of Ohio.

For more information, see http://moritzlaw.osu.edu/alumni/newsletter/mar2004/graham.html .

Since 1891, the Moritz College of Law has played a leading role in the legal profession through countless contributions made by alumni and faculty. Graduates of the school reside in all 50 states and 20 other countries and include justices of the Ohio Supreme Court, current and former U.S. Senators and Representatives, managing partners in law firms of all sizes, chief executive officers of Fortune 500 corporations, and attorneys with non-profit organizations and public interest law firms.

College Contact: Liz Cutler Gates, Director of Communications, (614) 292-0283

MORITZ COMMUNICATIONS

MORITZ PUBLICATIONS
- e-Record
- For the Record
- Law Bulletin
- Law Record
- Ohio State Law Journal
- Ohio State Journal on Dispute Resolution
- Ohio State Journal of Criminal Law
- I/S: A Journal of Law and Policy for the Information Society
- Special Edition
- This Month @ Moritz
- Week in Pictures

MEDIA RELATIONS
- Fact Sheet
- Moritz Faculty Experts Guide
- Moritz Faculty in the News
- News Release Archives
- Communications Staff
- Moritz Webcast Information
- Email Moritz Communications

Home > Communications > March 11 2004 Release

App-E34 (a)

Ex. 34.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Lisha Fan, M.D.,	:	
Plaintiff,	:	Case No. C2-03-966
v.	:	Judge Graham Magistrate Abel
Subir Nag, M.D., et al.,	:	
Defendants.	:	

DEFENDANTS' RESPONSE TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS, ETC., UNDER RULE 34

A. REQUESTS FOR DOCUMENTS

1. The exact definition of "overexposure of radiation."

> **ANSWER:** We Objection, as this request does not request documents, but the Defendants' opinion or position; however, Defendants have already provided to Plaintiff the following documents which may be somewhat responsive to request:
>
> Figure 6-27 titled "Relative spectrum of sources and effects of various levels of whole-body doses."
>
> Cumulative Occupational Dose History, beginning with 1999 monitoring period
>
> Graph – hand-written, with attached chart re "hematology,CBC
>
> Letter of July 19, 2002 from Robert E. Peterson, Jr. to Andrew Thomas, M.D.
>
> Department of the Navy—"External Irradiation"

2. To calculating the whole body dose relating to radiation exposure occurred on May 15, 2002.

> **ANSWER:** The following documents, along with the documents listed above, which you have already been provided, may be responsive to your request:
>
> Radiation Dosimetry Report of May 23, 2002
> E-mail memorandum from J. Houchin to L. Fan, dated June 5, 2002

App-E34(b)

Ex.34

3. Documentation of the purpose of in training exam from American College of Radiology (ACR).

    ANSWER: The following document is attached:

    ACR In-Training Examination for Radiation Oncology Residents–Direction to Program Directors, 2004

4. Plaintiff's Original report of in Training Exam of 2002 from ACR, requests to be inspected at site of ACR by plaintiff.

    ANSWER. The University does not have the original of this document; however, it has already provided you with a copy. If you wish to inspect the original at the site of ACR, you will need to contact that office.

5. Response documents from Dr. Reihard A. Gahbauer to Marsha A. Miller, Associate Executive Director, ACGME, relating to plaintiff's complaint in Nov. 2002.

    ANSWER: Attached is Letter dated January 17, 2003, from Drs. Gahbauer and Thomas to Marsha Miller

6. Provide copies of all plaintiff's application for leave, for her entire residency.

    ANSWER: Attached are copies of your Applications for Leave (19 pages) and your notes from doctors (5 pages)

7. Documents of registration of the Radiation Oncology Board Exam for Douglas B. Tippin, M.D., in Sept. 2002 from American Board of Radiology. (Proctor called his name and said Dr. Tippin was not registered).

    ANSWER: Attached is document from American Board of Radiology re Dr. Tippin applying for examination in Radiation Oncology.

App-E34 (c)

EX. 34

B. Request for "disclosure further of any support its defenses under Rule 26":

ANSWER: On December 31, 2003, you were provided initial disclosure pursuant to Rule 26, with attached documents.

JIM PETRO
ATTORNEY GENERAL OF OHIO

Wanda L. Carter (#0021458)
Trial Attorney
Christopher E. Hogan (#0070236)
MOOTS, CARTER & HOGAN
A Legal Professional Association
3600 Olentangy River Road
Columbus, Ohio 43214-3913
(614) 459-4140
(614) 459-4503 - Fax

Special Counsel to the Attorney General
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2004, 2004, I telefaxed (without attachments) and mailed by regular US Mail, postage prepaid (with attachments), Defendants' Response to Plaintiff's Request for Production of Documents to:

Lisha Fan, M.D., *pro se*
17 Jackson Street
Newton, MA 02459

Wanda L. Carter

L:\01000\1910\181\DISRSP01.DOC

United States District Court
Southern District of Ohio
Eastern Division

Lisha Fan, M.D.,

Plaintiff,

v.

Subir Nag, M.D., et al.,

Defendants.

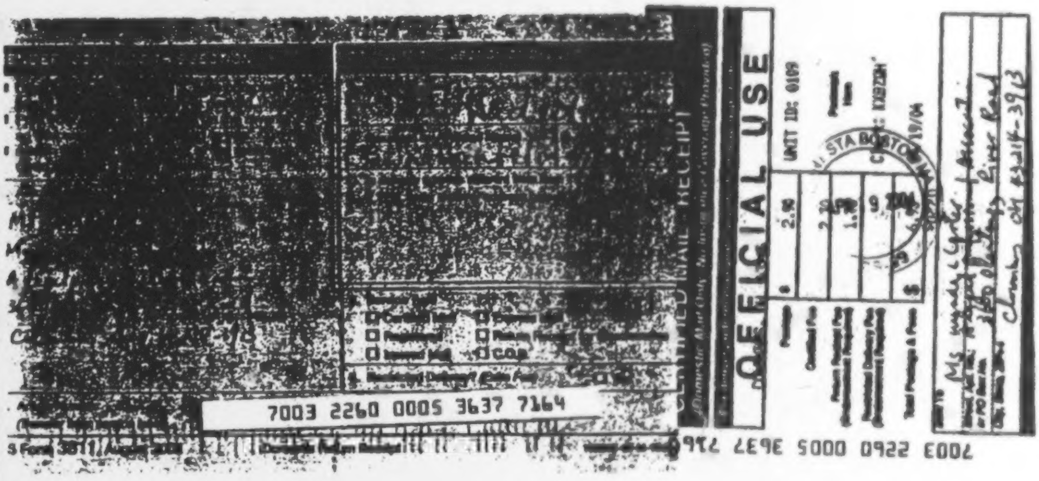
Case No. C2-03-966

Judge Graham
Magistrate Abel

PLAINTIFF' ANSWERING TO DEFENDANTS' FIRST SET OF INTERROGATORIES

INTERROGATORY

All the answer were written on the interrogatories form provided by Defendants.



CERTIFIED MAIL RECEIPT

OFFICIAL USE

UNIT ID: 0109

2.30

1.75

APR 9 2004

7003 2260 0005 3637 7164

7003 2260 0005 3637 7164

INTERROGATORIES

1. For each and every person believed by you to have seen, heard or known of any of the allegations contained in your Complaint, please provide the following information:

a) the name, current address, telephone number, and e-mail address of each such person;

Answer:

(1) All defendants. You have their name, current address. Tel. number & e-mail address.

(2) Drs. Hagop S. Mekhjian, Stephan F. Pariser, Igor Janke, D. Spigos, Mr. Robert E. Peterson, Ms. J. Houchin, Mr. Holder, Karent A. Holbrook (the president of the OSU)

(3) ABR, ACR, AMA, ACGME, NRC, OSHA, worker's compensation, EEOC

(4) Mr. Charleston Cheng-Kung Wang Esq. He communicating with Mr. Robert L. Holder.

b).the substance of all information or knowledge about the allegation known to each such person;

Answer:

Please review all the papers (complaint, amended complaint, brief and other paper filed to District Court (Mass. and Ohio) And "documents" responding

c). whether each such person gave any statement or account either orally or in writing of his or her knowledge of the alleged events, the date of any such statement, and the substance of any such statement; and

Answer:

Please review "documents" responding.

d) if such statement was in writing, either attach a copy hereto, or indicate where and when such statement may be examined.

Answer:

Please review production "documents"

2. Identify each person Plaintiff expects to call as an expert

witness at the hearing in this matter, stating his or her name, address and occupation and the subject matter of his or her testimony.

Answer:

Plaintiff will use text Books, Articles and conference or meeting hand out as an expert witness at the hearing or trial in this matter.

All documents were provided to you on Jan. 8, 2004.

If any other documents are discovered to be used as of expert testimony, Plaintiff will provide those as soon as possible.

3. Itemize, and show how you calculate, all losses, expenses, or any other damages that you claim were incurred by you or on your behalf as a result of the allegations contained in your Complaint. Include, but do not limit your answer to those losses or expenses that are attributable to lost wages and benefits, legal expenses and court costs, and costs for any medical, psychiatric, psychological counseling or other treatment required as a result of the alleged actions of Defendants.

Answer:

Please review Settlement Demand which was provided to you on Jan. 8, 2004.

4. Identify each person you believe retaliated against you because of your complaint regarding radiation exposure.

Answer: Dr. Gahbauer, Dr.Nag,

Dr. Bauer & Dr. Thomas have played role in assisting & supporting this matter.

5. Identify each person you believe retaliated against you because of your FMLA claim.

Answer: Same as Answer 4.

6. Identify each person you believe created the alleged "sexually hostile work environment."

Answer: Same as Answer 4.

7. Identify each person you believe is responsible for an alleged breach of contract.

Answer: Same as Answer 4.

8. Identify each person you believe is responsible for an alleged breach of the duty of fair representation.
Answer: Dr. Gahbauer, Mr. Robert Holder
9. Identify each person you believe defamed you in any way.
Answer: Dr. Gahbauer's letter on Dec. 17, 2002.
Dr. Bauer & Dr. Thomas have played role in assisting & supporting this count.
10. Please provide a complete summary of your work history, including every job you have worked, whether paid or unpaid, from January1, 2000 through the present.(you may exclude your positions at OSU Medical Center) Please provide the following information:
a. each employer's name, address and telephone number;
Oriental Medicine Cancer Center (self employer)
17 Jackson St. Newton, MA 02459
617-964-0047
b. Dates of employment; 1/2003-present
c. titles and nature of position held; and
Answer: Oriental Medicine treating any stages cancer patient, improving patient's quality of life.
d. the total compensation, including benefits, you received at each position.
Answer: From Jan. 2003-Dec. 2003, Gross income is $ 10126.00, No benefits.
11. If you have made any attempts to find employment from January1, 2000 through the present, please state:
a) the name and address of each employer to whom you applied or made inquiries;
Answer: (a)(b) please review the production of "documents"
Answer 22.
b). the date of such application or inquiry
Answer: see(a)
c) the title of the position, the nature of its duties and schedule for each job for which you applied or inquired;
Answer: Radiation Oncology job (Full time job)
d) the total compensation including benefits offered; and

Answer:$220,000-250,000 annual compensation for first 3 year.

e) whether you were offered a job and, if not , the reason you were given for not being hired.

Answer:

1) Plaintiff did not receive any job offered due to the termination from Residency program on Dec. 17, 2002.

2)Due to 6.5 months shorter of residency training, lost privileges of continue in the examination process and to be certified in Radiation Oncology

see attached letter from Lawrence W. David M. D. on April 2, 2003.

* Plaintiff did receive a job offer on Nov. 1, 2002, at Upstate Medical University. Dept.of Radiation Oncology. Job title is Radiation Oncologist with faculty title assistant professor, later lost this job due to the termination on Dec. 17, 2002.

12. If you have been treated for any medical, psychiatric, psychological or mental or emotional condition, whether not related to your claim in this case, for the period January 1, 1995 to the present, Please provide the following:

a) the condition for which treatment was sought;

Answer: see below

b)the date of the onset or discovery of said condition and whether the condition is still present;

Answer: see below

c) the name and address of the doctor or other professional or clinic or hospital who, or which, provided treatment or with whom you consulted for said condition;

Answer(a)(b)(c)(d)(e) all my treating physician including

Dr. Boggs (ER physician from OSU) Dr. Burgin (OSU)

Dr. Komer (family Doctor in Boston)

Dr. Zinny (GI Specialist in Boston)

Dr. Schapiro (from MGH) in Boston.

You have all the information from them. Please review them.

d) the dates of said treatment or consultation; and

Answer: see previous page.

e) all medications or other therapy taken or utilized to treat said condition, the reason for taking said medication or therapy, the dates during which said medications or therapies have been utilized, the names of the doctor prescribing said medications or professional recommending said therapies.

Answer: see previous page

13. Identify each person and/or entity you allege discriminated against you as set forth your Complaint.

Answer: Dr. Gahbauer

Dr. Bauer & Dr. Thomas have played role in assisting and supporting this matter.

14. Please provide the name, address, and telephone number, and relationship to you, of every person and/or entity whom you have discussed the allegations contained in your complaint.

Answer: Please see answer 1.

15. Please list and describe any and all documents, things and/or visual aids you intent to use at the trial of this case, irrespective of whether you intend to introduce the same into evidence.

Answer: Please see production of "documents"

16. Please provide a complete summary of you education history, beginning with college, including:

a) each institution of higer education's name and location; and

Answer: see next page.

b) any degree earned, and major, or, if no degree earned, type of studies pursued and reason for discontinuing studies.

Answer: (a)(b) Please see production documents answer 20 & 21.

REQUESTS

1. Any and all "document(s)" as defined herein relating in any way to your allegations of radiation exposure.

Answer:

(1) ER report, date 05/16/2002, MR#907572960

Diagonsis-radiation Expoure

(2) ER Discharge instruction 05/16/02

Diagonsis-radiation Expoure

(3) Dr. Burgin's ICD-9-cm Diagnosis codes, radiation Exposure, Neutropenia 05/20/02

(4) lab. Reports, comparison of the blood test results from samples drawn 09/28/2001, 03/15/2002, 05/16/2002, 05/17/2002 and 05/20/2002

(5) Dr. Komer's Diagnosis, Radiation Exposure, Neutropenia, fatigue and treatment records

(6) sick note from Dr. Burgin date 05/20/ 2002, and from Dr. Komer dates 05/24/02 , 06/10/02 & 06/20/02

(7)Patient's chart (John Potter) Brachytherapy Dosimetry report (impl. Date 05/14/02)

University Hospital ! Caution!, Radiation Material sheet, Exposure rate in mr/hr.

(8) OSU ALARA program (active levels)

(9) Cumulative occupational Dose history (from LANDAUER)

07/01/99-12/31/99 DDE 0.003

01/01/2000-12/31/2000 DDE 0.023

(Brachy Rotation 7/1/2000-9/30/2000)

01/01/2001-12/31/2001 DDE ND

Emergency report on 05/23/02 first reporting for monitoring period was 04/01/02-06/30/02

WH body DDE 44

RFinger SDE 40

Correction was made on 07/30/02 reporting for mornitoring period was 05/01/02- 05/15/02

WH body DDE 44

RFinger SDE 40

(10) All the letters between the Plaintiff and Defendants related with Radiation Exposure.

(11) All the documents from test books, Articles and conference hand-out and NRC, AMA, ACGME, JCAHO for Regulatory requirement of staff Radiation Safety has been provided to you on 01/08/04.

All above documents, you already have them.
If any other documents are discovered to be used as of expert testimony, Plaintiff will provide those as soon as possible.
2. Any and all "document(s)" as defined herein relating in any way to your claim that you were discriminated against in the terms and conditions of your employment or retaliated against as a result of your alleged radiation exposure.
Answer:
1) I was only female resident, post 7/2000, at Radiation-Oncology program, and I am a Chinese
2) at the time of my discharge, I was meeting Residency legitimate expectations;(see my resident's evaluation, I was discharged on 12/17/02 (letter from Dr. Gahbauer)
3) I was denied twice of education opportunities (Radiobiology class at Louisville in Aug./2002, and ASTRO meeting Oct. 2002) However, my male colleagues Douglas Tippin, and Sherif Yacob were allowed to attend both class and meeting.
Post radiation exposure, Plaintiff report to ACR, ABR, NRC, ACGME, OSHA, Worker's Compensation and EEOC before discharge. All those activity are protected by Law.(Equal Employment Opportunity Act Title VII, 42 USC §§ 2000e, 3(a), family & Medical Leave Act(FMLA) 5 U.S.C. § 6385 Fair Labor Standards Act/Equal Pay Act 29 U. S. C. § 215(a)(3), Occupational Safety & Health Act 29 U.S.C. § 660(c), Unfair labor practice Act 5U. S. C. §7116 (a)(1);Witness intimidation 18 U. S. C. § 1512 with attached documents.
3. Any and all "document(s)" as defined herein relating in any way to your FMLA claim.
Answer:
1)Post radiation exposure, Dr. Gahbauer direct contact my treating physician (Dr. Boggs, Dr. Burgin, Dr. Komer by phone, letters and E-mail)
2)Upon 2nd day return to work, force plaintiff to be evaluate by Commottee on physician Health.

3)multiple times force plaintiff to be evaluate by psychiatry physician Igor Janke M.D., Failed to give reasons.
4) Denied "Worker's Compensation" benefits
5)Denied Equal Education opportunities.
6)frenquently ask plaintiff to give you (Dr. Gahbauer) a recertification of her post radiation exposure injury,(5/20/02, Dr. Burgin. 5/24/02, 6/10/02 Dr. Komer, and 6/10/02 Dr. Burgin)

4. Any and all "document(s)" as defined herein relating in any way to your breach of contract claim.

Answer:

1) Received a contract from Hagop S. Mekhjian M.D. Director, Associate Dean for Clinical Affairs "for the current appointment period of 07/01/01 to 06/30/03, privileges have been approved as requested, and training certificate through 6/30/03 from State Medical Board of Ohio.
2) Satisfactory residency evaluation through entire residency.
3)qualified for Board Exam and took exam on Sept. 12,13/2002. You have all the documents.

5. Any and all "document(s)" as defined herein relating in any way to your breach of fair duty representation claim.

Answer:

1) A letter from Lisha Fan to Dr. Gahbauer on Oct. 22, 2002
2) letters from Robert L. Holder J. D. to Charleston Chung-kung Wang Eqs.on Oct. 17, Oot. 22 &29, 2002
From Wang to Holder Oct.15, 18, 22, 23 30, 2002
3) see Defendants Amended Answer (A9)
Attached those letters

6. Any and all "document(s)" as defined herein relating in any way to defamation claim.

Answer: Please see answer 22.

7. Any and all "document(s)" as defined herein relating in any way to any claim asserted against Dr. Subir Nag

Answer:

1) failure in compliance with NRC, AMA, ACGME, JACHO, OSHA for regulatory requirement of staff radiation safety

2) Given unfair resident (plaintiff)evaluation post Radiation Exposure

8. Any and all "document(s)" as defined herein relating in any way to any claim asserted against Dr. Gahbauer.

Answer:

All Counts in the 2nd amended complaint are relating to claim asserted against Dr. Gahbauer. See Answer 1-6.

9. Any and all "document(s)" as defined herein relating in any way to any cliam asserted against Dr. Nina samsami.

1) failure in compliance with NRC, AMA, ACGME, JACHO, OSHA for regulatory requirement of staff radiation safety.

2) refuse to calculate the whole body radiation exposure

3) failure timely change personal monitoring devices

4) failure to provide lead shielding for protection.

10. Any and all "document(s)" as defined herein relating in any way to any claim asserted against Dr. Connie Bauer.

Answer: She was assisting or supporting Dr. Gahbauer to all events post Radiation Exposure, ultimately, Plaintiff was wrongfully terminated for the events that surrounded her alleged Radiation Exposure.

11. Any and all "document(s)" as defined herein relating in any way to any claim asserted against Dr. Andrew Thomas.

Answer: He was assisting or supporting Dr. Gahbauer to all events post Radiation Exposure, ultimately, Plaintiff was wrongfully terminated for the events that surrounded her alleged Radiation Exposure.

12. Any and all "document(s)" as defined herein relating in any way to any claim asserted against Mr. Steven Marsh.

Answer:

1) failure in compliance with NRC, AMA, ACGME, JACHO, OSHA for regulatory requirement of staff radiation safety.

2) failure to provide lead shielding for protection.

13. Any and all "document(s)" as defined herein relating to any diagnosis of , treatment of, referral or consultation regarding you by any health care professional for any medical, psychiatric, psychological, or mental condition,

whether or not related to your claims in this case, for the period January 1, 1995 to present.

Answer: Defendants have all my medical record from Dr. Komer, Dr. Burgin and Dr. Boggs (ER report)

14. Any and all "document(s)" as defined herein relating to your claim that you suffered " neutropenia, secondary to radiation exposure" as a result of radiation exposure occurred on May 15, 2002.

Answer: Please see Answer 1.

15. Any and all "document(s)" as defined herein relating to your claim that Defendants failed to timely change your personal monitoring device, during the period of time that including May 15, 2002, including any University policies and /or procedures or any duty of Defendants relating to this claim.

Answer: To my best knowledge, our program have changed personal monitoring device quarterly since my first day of my residency, until May 1, 2002.

"Document(s)" were answered on question 1.

16. Any and all "document(s)" as defined herein relating in any way to your claims for costs and damages, including but not limited to receipts for costs expended.

Answer: see answer 3 of interrogation.

17. Any and all Federal and State Income Tax returns filed by you or jointly with another for the calendar years 2001 through the present, including any schedules or other attachments thereto and any all W-2 forms or 1099 forms received by you for these same years.

Answer: Objection, this NO relationship with this case.

18. Any and all "document(s)" as defined herein provided by you, or received from, any of the following agencies: Ohio Civil Rights Commission, the Equal Employment Opportunity Commission, ABR, NRC, ACGME, Ohio Bureau of Workers Compensation, or any other organization whether governmental or private, regarding any aspect of the claims contained in your Complaint.

Answer: Please see Answer 2. and Attached documents.

19. Any and all "document(s)" as defined herein relating in to your position that the Defendants were required to provide lead shielding for radiation protection in the procedures in which you claim you were exposed to radiation on or about May 15, 2002.

Answer: Information or (documents) were provided to you on 01/08/04.

20. A copy of any resume or Vita used by you from January 1, 2001 to the present.

Answer: Defendants have my resume: It's same.

Except update with

7/01/99-12/17/2002 Resident in Radiation Oncology at James Cancer Hospital (OSU) Columbus, OH

7/01/98-6/30/1999 Resident in OB-GYN at Brooklyn Medical Center, Brooklyn, NY

21. Any and all "document(s)" as defined herein that evidence your degree preparation, licenses or other professional accomplishments, not limited to documents if any attempts to gain licensure or professional acknowledgements in your filed and the results thereof.

Answer:

1) USMLE results

2) ECFMG certification

3)Certification from Brooklyn Hospital, NY

4) Training certificate from 7/1/2002-6/30/2003

22. Any and all "document(s)" as defined herein relating in any way to your attempts to find employment since January 1, 2001, including, but not limited to, applications for employment, correspondence with prospective employmers or agencies, letters of rejection or offer, letter of acceptance or rejection of offers of employment, any memoranda, notes, phone messages or other documentation regarding attempts to find employment.

Answer:

1) Apply 4th year resident on 12/12/02. to following Centers

(transfer program)

1) David Sherr M.D., Program Director, New York Hospital/Cornel University Medical Center Stich Radiation Center. Fax: 212-746-8749

2) Bruce G. Haffty M.D., Program Director Fax: 203-785-4622

3) Nora A. Janjan M.D., M.D. Anderson Cancer Center Fax: 713-794-5573

4) Rosemary S. Altemus M. D., Program Director. Fax: 301-480-5439

5) Jay R. Harris M.D., Program Director Fax: 617-632-2290

6) Dr. Bradley. Mallinckrodt Institute of Radiology, Dept. of Radiation Oncology Fax: 314-362-8521

7) Shermian A Woodhouse, M.D., program Director Fax: 212-305-5935

8)Ralph A. Bracchio M. D., Program Director, Fax: 585-275 1531

9) Bernadine Donahue M.D., Program Director Fax: 212-263-6274

All application for transfer program were no response. Please see attached applications.

Job interview at ASTRO meeting

1) Sopbie Turner M.D., North Shore Hospital

2) Cancer Care Group P. C. Indianapolis, Indiana.

3) Dr. Phillip Devlin Brigham & Woman's Hospital/Harvard Medical School, 12 month full time clinical brachytherapy Fellowship

4) Dr. Vincent Young Private Practice group, NY

5) Dr.Chung T. Chung M.D., Professor and Chairman, UpState Medical University , Dept. of Radiation Oncology Site visit on Nov. 1, 2002 and verbal job offered on the same day job title – Radiation Oncology with faculty title Assistant Professor, later lost this job due to termination on Dec. 17, 2002.

6) Central Care Cancer Center- Site visit on Dec. 7 & 8, 2002. Please see attached letters and interview schedule, no job offer due to the termination.

7) interview at Radiation Oncology Dept. 17 centenniel Dr. Peabody, MA on March 3, 2003. See Attached Schedule, No job offered due to the termination.

23. Any and all "document(s)" as defined herein provided to, received from, or regarding any expert witness whom you expect to call at the trial of this matter.

Answer: Please see answer 19.

24. Any and all notes, diaries, journals, memoranda, e-mail, and recordings or similar "document(s)"relating in any way to any of your claims

Answer: Please see previous answers, if any other documents are discovered to be used as of expert testimony, plaintiff will provide those as soon as possible.

25. Any and all written statements, affidavits or other "document(s)" made by any person regarding the subject matter of your charge to agencies and organizations regarding radiation exposure or Second Amended Complaint.

Answer: Please see answer 19 and previous answers regarding the radiation exposure.

26. Any and all "document(s)" as defined herein you plan to use at the trial of this matter, irrespective of whether you intent to introduce the same into evidence.

Answer: All "document(s)" provided to you today or before this day will be planed to use at the trial of this matter and intend to introduce the same into evidence.

27. Any and all "document(s)" as defined herein relating in any way to your answers to Defendants' First Set of Interrogatories.

Answer: Please see individual answers.

28. Any and all "document(s)" as defined herein provided by you or received from any employmer or educational institution from January 1, 1995 to the present.

Answer: Please see answers 20 & 21

29. Any and all "document(s)" Not otherwise requested herein relating in any way to your claims in this action or any claimed damages.

Answer: If any other documents are discovered to be used as of expert testimony or as of evidence, plaintiff will provide those as soon as possible.

JIM PETRO
ATTORNEY GENERAL OF OHIO
s/Wanda L. Carter
Wanda L. Carter (#0021458)
Trial Attorney
Christopher E. Hogan (#0070236)
MOOTS, CARTER & HOGAN
A Legal professional Association
3600 Olentangy River Road
Columbus, Ohio 43214-3913
(614)459-4140
(614)459-4503- Fax
Special Counsel to the Attorney General
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent by regular US Mail, postage prepaid, to:

Lisha Fan M. D., *pro se*
17 Jackson Street
Newton, MA 02459
This 19th day of March, 2004

s/ Wanda. L. Carter
Wanda L. Carter

VERIFICATION

STATE MASSACHUSETTS
COUNTY OF Middle sex, SS

I, lisha Fan, hereby acknowledge that I have sunmitted the foregoing answers to interrogatoris and further acknowledge that they are true to the best of my belief.

s/ lisha Fan
Lisha Fan

Before me, on this 19th day of April. 2004, a Notary Public in and for said state, personally appeared Lisha fan, who being by me duly sworn deposes and said that the statements contained in the foregoing are true to the best of her knowledge, information and belief.

s/A. M. Augstin
Notary Public Exp. 1/28/2011

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent by Facsimile and certified mail:

MOOTS, CARTER & HOGAN
A Legal professional Association
3600 Olentangy River Road
Columbus, Ohio 43214-3913
This day 19th day of April, 2004

s/lisha Fan MD., *pro se*

App-E36

United States District Court Southern District of Ohio Eastern Division

Lisha Fan, M.D.,
Plaintiff,

Case No. C2-03-966
Judge Graham
Magistrate Abel

v.

Subir Nag, M.D., et al.,
Defendants.

PLAINTIFF' FIRST SET OF INTERROGATORIES TO DEFENDANTS AND OTHER PERSONS

Plaintiff, hereby serve these Interrogatories, Pursuant to Fed. R. Civ. P. 33 and Fed.R.Civ. P. 26(f) 6b, upon **Defendants**

(Dr. Reinhard Gahbauer, Dr. Connie Bauer, Dr. Nina Samsami, Dr. Subir Nag, Dr. Andrew Thomas, Mr. Steven March), and **other Persons** (Dr. Hagop S. Mekhjian, Dr. Stephen F. Pariser, Ms. Jennifer Houchin, Mr. John Potter), which Interrogatories shall be answered in writing by Defendants and other persons, under oath, within thirty (30) days after service.

INSTRUCTION FOR ANSWER & OBJECTION

...

INTERROGATRIES

A.EACH INTERROGATORY SHALL BE ANSWERED IN WRITTEN BY **DR. REINHARD GAHBAUER**, UNDER OATH, WITHIN THIRTY (30) DAYS AFTER SERVICE.

1.For each and every person believed by you that you were requested to given reference regarding plaintiff' Lisha Fan' job interview or residency transfer.

(a)the name, current address, telephone number, and e-mail address of each such person;

(b)All information or knowledge of the reference or statement that you provided to individual potential employer either orally or in writing. The date and the substance of any such statement.

(c)If such statement or reference was in writing, either attach a copy hereto, or indicate where and when such statement may be examined.

2.Issues relating to radiation exposure occurred on May 15, 2002.

(a)Changing personal monitoring devices and report (film and ring badge) was quarterly done. Why suddenly change personal monitoring devices on May 1.2002, instate of April 1, 2002, Just before Radiation exposure occurred.

(b)Was John Potter your patient? Were you treating him with external beams initially? Please attach the complete patient' (John Potter) chart, including initial consult, OR report, pathology report, Staging, treatment planning, Ir192 Seeds ordering form and shipping data, date of implant removal, and Mr. John Potter follow up visit notes. Is Mr. John Potter alive?

(c)Why using 100cGY/hr dose rate?

(d)Why delay one day for loading dose?

(e)Why did not provide lead shielding to protect your resident?

(f)Exposure rates in mR/hr. (date May 15, 2002)

Shielded	10:05 am	UnShielded10:05 am
bedside	85.0	152.0
3 feet from bed	1.60	35.1
6 feet from bed	0.96	12.2

Can you explain those numbers?

3.Post radiation exposure. Please provide the following information:

(a). The report from LANDAUER stated that whole body DDE was 44mrem, and Fingers SDE were 40mrem. Was the dose from one incident? Why my fingers dose was lower than my whole body dose?

(b). What is OSU ALARA Program Action levels for quarterly?

(c). What limits apply per procedure for Ir192 seeds implant with dose rate 100cGY/hr.

(d). In Emergency Room, 5/15/02. any discussion or statement you were made to Dr. Leo Boggs before I saw him.

(e). How often did you contact plaintiff' treating physician Dr. Komer by phone, letter or e-mail?

(f). How often did you ask recertification from plaintiff' treating physicians during the one moth period (May 20-June 20, 2002)? On June 17th & 18th, 2002. (during my sick leave) you requested me to meet with you, Dr.Bauer and Dr. Samsami. The entire meeting was trying to convince me that my symptoms and signs were not caused by radiation exposure, you then threatening me about possible not permit me to take my board exam. Also you stated that my in-training exam result was not good, but the report which he was showing me was not original.Can you explain it?

(g). As of why, I was forced to be evaluated by Dr. Stephen F. Pariser and Committee on Physician Health on the second day upon my return to work post Radiation Exposure? Continued forced me to be evaluated by Dr. Igor Janke.

(h). On July 18, 2002, issue relating "Stop note", ten patients were completed their Treatment from May 20-June 26, 2002. Those "stop note" should be completed within 24 hours by Dr. Nag. Why you force me to dictate them, while I was rotation at Neurosurgery.

(i). On July 23, 2002, a letter from Dr. Gahbauer to Dr. Fan. "... I will then again consult with the faculty if your admission to the Board examination can indeed be supported". I was qualified by Dr. Gahbauer just before the radiation exposure. And plaintiff received the definitive appointment for the written examination from the ABR on July 10, 2002. Can you explain it?

(j). On July 24, 2002, I was forced to be evaluated by Dr. Igor Janke. Can you explain it?

(k). Identify each person Defendants expects to call as an expert witness at the hearing in this matter, stating his or her name, address and occupation and the subject matter of his or her testimony.

(l). On Aug.6, 2002, a letter from Dr. Fan to Dr. Gahbauer, asking the permission to attend the radiobiology board review course at the University of Louisville. However, I was denied, Douglas Tippin and a 3rd year resident Sherif Yacoub were granted education time and paid by department. Were they qualified for board Exam in Sept. 2002?

(m). ACR In-Training Examination for Radiation Oncology Residents"the purpose with-information that is useful to them in evaluating their own progress. And to provide you with data that is helpful in analyzing and evaluating your program. The examination is intended to be a measure of general achievement inRadiation oncology for residents and program director. **It should not be used as the ONLY measure of examinee's performance for qualification to**

any postgraduate program or certification..." Can you explain this to me? Two years from March 2002, I still did not receive my original In-Training exam report (March 14, 2002), Can you explain to me as to Why?

(n) Aug.6, 2002, I wrote a letter to you. RE: Equal opportunity of education. regarding the review course in radiobiology at Louisville, Kentucky. (Dates wereAug. 16-18, 2002). I was rotating at Neuropathology Dept. I was told by Dr. Tippin "He and Sherif Yacoub were approved by you to attend this class." He suggested me to ask you about it. Your responded to me by Email on 8/6/02 on 11:04am and 4:51pm, I quote "I am surprised by your letter. You have been informed about this course by Dr. Tippin at my request... May I point out that this course support is beyond our obligations and offered as a courtesy." "...in principle, our faculty need not pay for it". On Aug. 9, 2002, you called me stated that Dr. Pariser wanted to talk with me. He suggested that I should have a meeting with him and committee again on May 16, 2002 at 2:00 pm. Again, did not tell me why. On Jan.17, 2003, a letter from you and Dr. Thomas to Marsha Miller "...this year the program had agreed to send her along with other residents to the radiobiology review course reference above in Louisville, Kentucky..." Can you explain to me it? And provide all documents to support this.

(o). On Jan.17, 2003, A letter from you and Dr. Thomas to Marsha Miller "... by Sept. 2002, Dr. Fan had substantially exceeded the total amount of time that the American Board of Radiology allows..." On Aug. 30, 2002, a letter from Dr. Robert R. Hattery (Executive Director from American Board of Radiology) to Dr. Gahbauer "...I have reviewed the information and calculated that as of 8/28/2002 Dr. Fan has had 113 days away from your program. If Dr. Fan exceeds the 120 days limitation she will need to extend her residency accordingly". Can you give me any or all documents that confirm the **"...by Sept. 2002, Dr. Fan had substantially exceeded the total amount of time.."**

On this very letter, "the faculty further felt that, Based on her academic performance to date..." I did not quite understand this, all I known that my performance was satisfactory through my entire residency, in fact I was qualified by Dr. Gahbauer for taking the Board Exam on Sept.12 &13, 2002.

On this very letter, "she appealed that decision via the due process provisions of the Limited Staff Agreement at Ohio State. She secured legal representation and that attorney was involved in and in active communication with Medical Center counsel during the appeals process..." On F26.form "Motion for leave to file amended Answer, Instanter" I quote " Defendants are without knowledge or information sufficient to form a belief regarding whether plaintiff retained Mr. Wang..."

Can you tell me which statement you or your attorney made was **TRUE Statement**?

On this very letter, "In Dec. 2002, she was terminated from the program due to her lack of cooperation in following through with the issues raised in her suspension Letter." Can you explain to me what the "lack of cooperation..." is?

4. Can you tell me, as to why, you force me to be evaluated by Dr. Igor Janke?

B.EACH INTERROGATORY SHALL BE ANSWERED IN WRITTEN BY **DR. CONNIE BAUER**, UNDER OATH, WITHIN THIRTY (30) DAYS AFTER SERVICE

1.Changing personal monitoring devices and report (film and ring badge) was quarterly done. Why suddenly change personal monitoring devices on May 1.2002, instate of April 1, 2002, Just before Radiation exposure occurred.

2.Were you the attending who are oversee residents' On call Schedules? Before ASTRO meeting, the Oncall Schedule were prepared by all residents except me, I was doing my outside rotation, I bought that Schedule to your attention, because of that oncall schedule was unfair. you then said "discuss among your residents." Which I did, but no one was available for coverage. Our program is a small program. Sometime, the situation like this, we don't have enough residents cover the calls. Attendings will take calls without residents. Have you made oncall by yourself without a resident during my residency? Also, I wrote four letters to Dr. Gahbauer, you and Dr. Grecula regarding the ASTRO meeting and Oncall schedule. Because I was scheduled oncall with you and Dr.Grecula during the ASTRO. I believed that patients' care have been appropriated covered by you and Dr. Grecula. Please provide any or all documents that if patients were not appropriate covered during the ASTRO meeting period.

3. Have you done any brachytherapy procedure like what I did on May 15, 2002, when you were resident and now as attending physician?Please review Mr. John Potter's chart. What treatment plan was?It was curative or palliative? Why choice the 100cGy/hr of Ir192? Why delay one day for loading dose? Please provide all documents from current literature to support your Opinion.

4.From Jan.1, 2002 to March 31,2002, I was rotated with you, I made a few of concerns to Dr. Gahbauer and Carol Hasbrouck regarding your teaching issues. Later, I received unfair residency evaluation from you. Can explain to me, as to why?

5.On June 17, 2002, Dr. Gahbauer arranged a meeting for me to meet with you , Dr. Samsami and himself. The entire meeting was trying to convince me that my symptoms and signs were not caused by radiation exposure. When you asked my lab. results, I showed them to you. (my absolute lymphs were dropped from 1.9 to1.5 to 1.2 on May 16th, 17th, and 20th 2002 post Radiation Exposure).You then said that could caused by Virus or Stress. I would like to learn from you that you were questioning my treating physicians' (Dr. Boggs, Dr. Burgin and Dr. Komer) diagnosis. Based on what? Please provide all documents to support your diagnosis?

6.On Oct.11, 2002, when I returned to work that day, you handed a suspension letter (it was dated on 10/08/02) to me, and shout out "If you don't see Dr. Janke, you have to clean your desk within 24 hours". Can you explain to me, as to why? I have to see him.

C.EACH INTERROGATORY SHALL BE ANSWERED IN WRITTEN BY **DR. SUIRB NAG,** UNDER OATH, WITHIN THIRTY (30) DAYS AFTER SERVICE.

1.Changing personal monitoring devices and report (film and ring badge) was quarterly done. Why suddenly change personal monitoring devices on May 1.2002, instate of April 1, 2002, Just before Radiation exposure occurred.

2.Was John Potter your patient? Were you treating him with external beams initially? If he was not your patient initially? Who treat him initially? Why he was referred to you? Treatment plan for him was curative? Or palliative?

3.Is Mr. John Potter alive? When was last follow up visit? His current health condition.

4.Why you choice 100cGY/Hr dose rate? Was optimal? Try to shorter treatment time?

5.Why delay one day for loading dose?

6.Why did not provide lead shielding to protect your resident? I requested to you multiple times regarding the lead protection.

7.Exposure rates in mR/hr. (date May 15, 2002)

Shielded	10:05 am	UnShielded10:05 am
bedside	85.0	152.0
3 feet from bed	1.60	35.1
6 feet from bed	0.96	12.2

Can you explain those numbers? You were standing end of bed. Where Steven Marsh stand at? I did not see him at whole procedure.

8.How many similar cases like this one (Ir.192 seeds implant with 18 catheters, and dose rate 100cGy/hr) that you have done, in the past three year. If any please provide all patients charts and all the documents.

9.The report from LANDAUER stated that whole body DDE was 44mrem, and Fingers SDE were 40mrem. Was the dose from one incident? Why my fingers dose were lower than my whole body dose? Are you capable to calculate the Whole body exposure dose and fingers dose? Please calculate them. List Calculation formla.

10.What is OSU ALARA Program Action levels for quarterly?

11.What limits apply **per procedure** for Ir192 seeds implant with dose rate 100 cGY/hr.

12.On May 17, 2002, I discussed with you about safety issue. I stated that based on Perez's book, page 501, "... when using radioactive source, the operating physician, assistants, and anesthesiologist should work behind individual lead barriers..." however, you were threatening me, "my preference is that I don't want you work with me." Why you acting irrationally?

13.Post radiation exposure, you give me a very unfair evaluation, Can you Explain to me?

D. EACH INTERROGATORY SHALL BE ANSWERED IN WRITTEN BY **DR. NINA SAMSAMI**, UNDER OATH, WITHIN THIRTY (30) DAYS AFTER SERVICE.

1. Please describe your job responsibility as a medical health physicist and Chairman of OSU Safety Committee work at Radiation Oncology Department at James Cancer Hospital

2.Can you explain to me that, as to why, changing personal monitoring device were on 5/1/02 instead of 4/1/02 (delay one month).

3. Are you capable to calculate the whole body exposure dose?

4. As to why you refuse to calculate the whole body radiation exposure dose.

5.On June 17, 2002, Dr. Gahbauer arranged a meeting for me to meet with you, Dr. Bauer and himself. The entire meeting was trying to convince me that my symptoms and signs were not caused by radiation exposure. On that day, when I asked you that what is the guideline for brachytherapy procedure. You answered that "No, there is no guideline for each procedure, there is ALARA Time, distance and shielding". Can you explain to me, why did not provide to me the lead shielding?

6.Can you explain to me, Is there any rational to use dose rate of 100cGy/hr. of Ir192 for this patient (Mr. John Potter). Provide all documents or literature to support your opinion.

E. EACH INTERROGATORY SHALL BE ANSWERED IN WRITTEN BY **DR. ANDREW THOMAS,** UNDER OATH, WITHIN THIRTY (30) DAYS AFTER SERVICE.

1. On July 17, 20002, a letter from you to Dr. Fan, "I have reviewed the scores myself with Ms. Michelle Wimbish from the American College of Radiology..." Can you provide original In-Training result to me?

2. On July 24, 2002, a letter from you to Dr. Fan "... that you indeed did not have a significant radiation exposure in May of this year." Can you give me the exact definition of significant radiation exposure?

3. On July 26, 2002, I wrote a letter to you. RE: Radiation Exposure and Radiation Oncology In-Training score. And I did request to meet with Dr. Mekhjian, Dr. Gahbauer and other persons. But, I did not receive any response from you. Can you explain it?

4.On Jan. 17, 2003, a letter from you and Dr. Gahbauer to Ms. Marsh Miller (Associate Executive Director, Resident Complaints at ACGME), in this very letter, "In Dec. 2002, she was terminated from the program due to her lack of cooperation in following through with the issues raised in her suspension. Can you explain to me what the "lack of cooperation in following through with the issues raised in her suspension..." is?

F. EACH INTERROGATORY SHALL BE ANSWERED IN WRITTEN BY **MR. STEVEN MARSH**, UNDER OATH, WITHIN THIRTY (30) DAYS AFTER SERVICE.

1.Please describe your job responsibility as a medical health physicist work at Radiation Safety Office of Environmental Health and Safety.

2.Can you explain to me that, as to why, changing personal monitoring device were on 5/1/02 instead of 4/1/02 (delay one month).

3.Do you capable to calculate the whole body exposure dose?

4.Where were you while I was performing implant loading dose to patient on May 15, 2002.

5.Was your duty to follow the Safety regulation from NRC, OSHA, ACGME, JACHO ?. When you said "that source was very hot." After that procedure, Why you did not provide lead shielding to performing physician?

G. EACH INTERROGATORY SHALL BE ANSWERED IN WRITTEN BY **DR. HAGOP MEKHJIAN**, UNDER OATH, WITHIN THIRTY (30) DAYS AFTER SERVICE.

1.On Aug.26,2002, a letter from you to Dr. Fan "... I have received assurances based on independent evaluations that you have not been subjected to any Significant radiation exposure". Can you give me the exact definition of significant radiation exposure?

2.On Sept.5, 2002, a letter from you to me "...I would therefore urge you to contact either Dr. Pariser or Dr. Janke directly and complete your evaluation with Dr. Janke to satisfaction of the committee." Can you explain to me, as to why, I was been forced psychologically evaluation post radiation exposure.

3.On 09/17/02, 4:34pm e-mail, from Dr. Pariser to Dr.Gahbauer " follow Dr. Mekhjian's plan". Please explain to me, what plan that you had relating this matter (Radiation exposure> suspension> termination).

H. EACH INTERROGATORY SHALL BE ANSWERED IN WRITTEN BY **DR.STEPHENF. PARISER**, UNDER OATH, WITHIN THIRTY (30) DAYS AFTER SERVICE.

1. On 09/17/02, 4:34pm e-mail, from Dr. Pariser to

Dr.Gahbauer "follow Dr. Mekhjian's plan". Please explain to me, what plan that Dr. Mekhjian had relating this matter (Radiation exposure> suspension> termination).

2. Can you explain to me, as to why, you referred me to Dr. Igor Janke for a psychiatric assessment.

3. On Aug. 9, 2002. Dr. Gahbauer arranged phone call for you to talk to me. You informed me that I have to meet with you and Committee on Aug. 16, 2002. Can you explain to me Why?

I. EACH INTERROGATORY SHALL BE ANSWERED IN WRITTEN BY **MS. JENNIFER HOUCHIN,** WITHIN THIRTY (30) DAYS AFTER SERVICE.

1. Please describe your job responsibility as a medical health physicist work at Radiation Safety Office of Environmental Health and Safety.

2. Can you explain to me that, as to why, changing personal monitoring device were on 5/1/02 instead of 4/1/02 (delay one month).

3.Are you capable to calculate the whole body exposure dose?

4.Can you tell me that 44mrem DDE was from that procedure only or from 5/1/02/to 5/15/02?

5.apparently, the dose of fingers (40 mrem) was incorrect, Can you calculate them? Please provide all the calculation steps.

J. EACH INTERROGATORY SHALL BE ANSWERED IN WRITTEN BY **MR. JOHN POTTER,** UNDER OATH, WITHIN THIRTY (30) DAYS AFTER SERVICE.

1.Were you Dr. Gahbauer's patient initially?

2.What the original diagnosis was before any treatment? Staging?

3.Did you understand that Ir192 seed implant with dose rate100cGy/hr?

4.How are you doing right now?

5.When was last follow up visit that you saw Dr. Nag and Dr. Gahbauer.

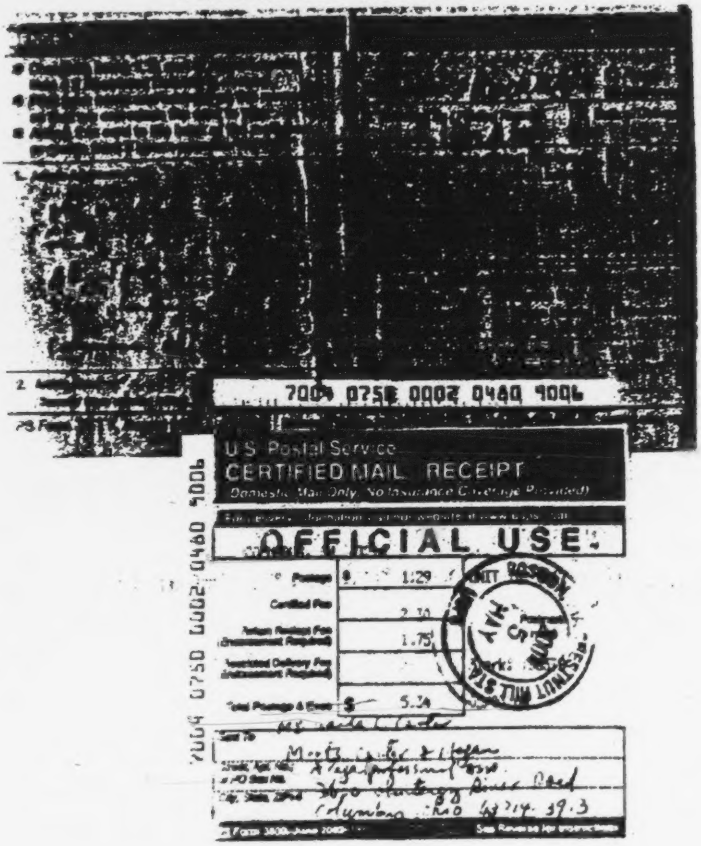
App-E36

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was delivered by Certified mail to the following on May 5, 2004

Ms. Wanda L. Carter
MOOTS, CARTER & HOGAN
A Legal professional Association
3600 Olentangy River Road
Columbus, Ohio 43214-3913

s/lisha Fan MD., *pro se*
Lisha Fan, M. D., pro se
17 Jackson St.
Newton, MA 02459
Tel/Fax: 617-964-0047



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Total Postage & Fees	$ 5.34

MAY 5
CHESTNUT HILL STA
BOSTON

Sent To Ms Wanda L Carter
Moots Carter & Hogan
Street, Apt. No.; or PO Box No. A legal professional assn
3600 Olentangy River Road
City, State, ZIP+4 Columbus Ohio 43214-3913

PS Form 3800, June 2002 See Reverse for Instructions

中华人民共和国总领事馆
Consulate General of The People's Republic of China
520 12th Avenue New York, N.Y. 10036

Ex. 39

June 15, 2004
Qiao (04) 029

Immigration Court
James L. Graham
Chief United States District Judge

Office of Clerk
United States District Court
Southern District of Ohio
Columbus, Ohio 43215

Re: Case No. C2003-966 (Name: Fan V. Nag et al)

His Honorable Judge:

Ms. Fan Lisha, a Chinese national came to the Consulate recently and complained about the following situation. According to her description, during her residency at James Cancer Hospital at Ohio State University, she suffered from radiation exposure as she was performing a Brachytherapy implant procedure following her attending doctor's order. She claims that the hospital authority should be held responsible for all this.

We pay great attention to the legitimate rights and interests of Chinese nationals. It is our hope and beliefs that your honor could judge the case according to facts and evidence and reach a fair and just settlement as soon as possible.

Thank you for your time and attention.

Sincerely,
Cui Ai Min

Deputy Consul General

Enclosure: letter from Ms. Fan Lisha to the Consulate

App-E37

United States District Court
Southern District of Ohio
85 Marconi Boulevard
Columbus, Ohio 43215

Chambers of
James L. Graham
Chief Judge

Ex 34

June 17, 2004

Cui Ai Min
Deputy Consul General
Consulate General of The People's
    Republic of China
520 12th Avenue
New York, NY 10036

Re: Lisha Fan, M.D. v. Subir Nag, M.D., et al.
Case No. C2-03-966

Dear Mr. Min:

Thank you for your letter regarding Dr. Lisha Fan dated June 15, 2004, which I received on June 16, 2004. I appreciate the concern that you expressed for Dr. Fan and her lawsuit pending before this court.

In your June 15, 2004 letter, you enclosed a letter from Dr. Fan dated June 6, 2004, which stated that I dismissed her case on April 30, 2004. Her case was not dismissed in its entirety, however. Some of her claims were dismissed on April 30, 2004, but her Title VII claim against The Ohio State University Medical Center remains pending at this time. For your reference, I have enclosed a copy of that opinion dated April 30, 2004 (doc. #49).

As to the claims that were dismissed, the right to a jury trial does not apply to claims that are not legally cognizable.

For your information, I have also enclosed copies of additional orders entered in this case dated October 9, 2003 (doc. #19), January 9, 2004 (doc. #27), March 23, 2004 (doc. #43), April 5, 2004 (doc. #46), May 3, 2004 (doc. #50), and June 10, 2004 (doc. #58).

Sincerely,

JAMES L. GRAHAM
Chief United States District Judge

JLG:seh
Enclosures
cc: Wanda L. Carter, Esq. (w/enclosures)
    Lisha Fan, M.D. (w/enclosures) ✓

Senior Judge Gilbert S. Merritt August 10, 2004
United States Court of Appeals
For the 6th Circuit
100 East Fifth Street,
Potter Stewart U. S. Courthouse
Cincinnati, Ohio 45202-3988 By Certified Mail
RE: 04-3969
Fan vs Nag (District Court No: C2-03-966)

Dear honorable Judge Merritt:

I am Lisha Fan, M.D. Lives at 17 Jackson St. Newton, MA 02459, Since 1993.Also, I am a plaintiff. My case is pending in the United States District Court Southern District of Ohio Eastern Division.

I am writing to you today for one simple reason: I respect you, because you are fair and public-spirited.

On August 5, 2004, I have received a letter from Ms. Nancy Barnes, a case manager from your court (dated on July 29, 2004). By surprise that I saw she wrote to me "Your appeal has been docketed as case number **04-3969** with the caption that is enclosed on a separate page." I just simply can not understand it. How did that happened? As of when, did I file an appeal case to your court?

On July 23, 2004, I filed a Petition for a writ certiorari to The Supreme Court of United States.

On July 30, 2004, received a order from Judge James L. Graham (a Chief Judge James L. Graham of United States District Court Southern District of Ohio)

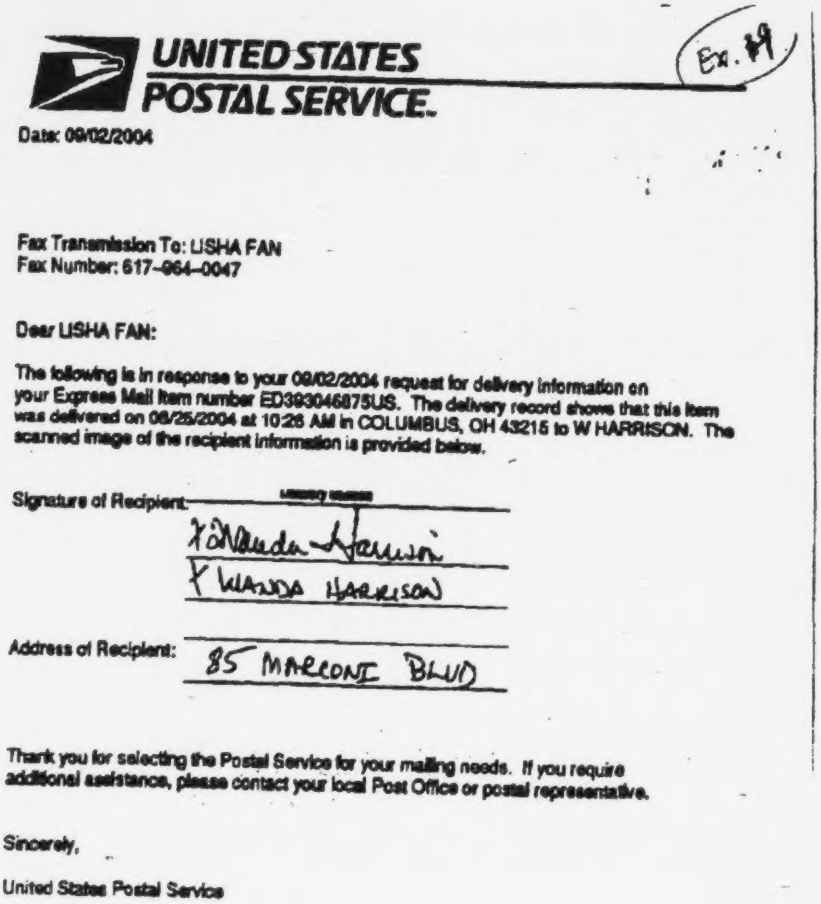
Enclosed please find the following:

1.A copy of the petition for a writ of certiorari
2.Appendix of petition for a writ of certiorari.
3."Notice of appeal" to the United Stated District Court Southern District of Ohio Eastern Division.
4.a letter from Nancy Barnes to Lisha Fan on July 29, 2004
5.Order from Judge Graham on July 30, 2004

Thank you for your time and attention.

Sincerely yours,
Lisha Fan, M.D., Pro se
17 Jackson, St.
Newton, MA 02459
Tel/fax: 617-964-0047
Cc: The Consulate General of the People's Republic of China in New York

App-E39



Ex. #9

UNITED STATES POSTAL SERVICE.

Date: 09/02/2004

Fax Transmission To: LISHA FAN
Fax Number: 617-964-0047

Dear LISHA FAN:

The following is in response to your 09/02/2004 request for delivery information on your Express Mail item number ED393046875US. The delivery record shows that this item was delivered on 08/25/2004 at 10:26 AM in COLUMBUS, OH 43215 to W HARRISON. The scanned image of the recipient information is provided below.

Signature of Recipient: YoWanda Harrison
Y WANDA HARRISON

Address of Recipient: 85 MARCONI BLVD

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service

App-E40(a)

RECD SEP 06 2002

The American Board of Radiology

Diagnostic Radiology Radiation Oncology Radiologic Physics

Robert R. Hattery, M.D., Executive Director

Ex. 40

Officers
[illegible], Ph.D., President
[illegible], Wisconsin
Steven A. Leibel, M.D., Vice President
New York, New York
Philip O. Alderson, M.D., Secretary-Treasurer
New York, New York

Assistant Executive Directors
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Richmond, Virginia
Lawrence W. Davis, M.D., Radiation Oncology
Atlanta, Georgia
[illegible], Ph.D., Radiologic Physics
Madison, Wisconsin

Diagnostic Radiology
Philip O. Alderson, M.D.
New York, New York
[illegible]

August 30, 2002

Reinhard A. Gahbaner, MD
Radiation Oncology
Ohio State Univ.
300 West 10th Avenue
Columbus, OH 43210

Dear Doctor Gahbaner:

Thank you for your letter of August 28, 2002 in reference to Dr. Lisha Fan's details of absence. Board policy states that in a 4 year training program a resident cannot exceed [redacted] program. I have reviewed the information and calculated that as of [redacted] Dr. Fan has had 113 days away from your program. If Dr. Fan exceeds the 120-day limitation she will need to extend her residency accordingly.

Please keep the Board informed of Dr. Fan's progress.

Best regards.

Sincerely,

R.R. Hattery

Robert R. Hattery, M. D.

RRH/lb

Radiation Oncology
[illegible]

Radiologic Physics
[illegible]

App-E40(b)

EX. 40

6157

- LISHA FAN -
→ daughter picture on PC screensaver
→ schedule things added last minute
→ not able to review treatment plan ō one attending
  - follow-ups and simulations scheduled @ same time.
  - can't do both.
→ MGH rotation →
  - initially said yes → then said await inservice exam results → required 75th to 80'ile → resident feels too high.
  - MGH agreed to take her in March

April 2002 - BRACHYTHERAPY ROTATION.

4/12/02 - interstitial implant
  → pulled out per pt ?

5/1/02 - Δ'd ring badge. → didn't get one initially →
  only got what asked for

5/14/02 - again interstitial implant in between 2 prostate cases
5/15/02 - her program doesn't use shielding when loads implant } she is concerned
  - started third case -
    - then ↓ appetite and worse feeling in arm/abdomen
  Ⓢ → has not gotten results of ring/badge yet
  - Keith saw her as well.
  - lymphocytes ↓ to 1.2.

→ ACR - is 2002 form accurate? - did not get report when first asked

⇒ cell phone - 5/21 8:18 PM - call from OSU Δ'd SPRINT SVC.

→ 3/24 → she Δ'd service.

BURGEN

App-E40(c)

EX. 40

Have not finished [illegible]

LISHA FAN 9/3/02 :

→ AUG [redacted] – ill → to BOSTON

↳ To Louisville for Conference following weekend (8/16-19)

↳ back to BOSTON

↳ has been there since

DR. COMER – EXCUSE through end of August.

DR. BUNNY – EXCUSE 8/28-30.

---

① TOTAL # OF DAYS –

② [redacted] – [redacted] – not on since ≥ for total days off.

③ SICK LEAVE – [redacted] SPRING 2002 – re: ~~[illegible]~~ pregnancy
[redacted] AUG 2002 – ? reason but has [illegible]

④ EDUC. PROGRESS – not clear that will pass but have recommended her.

⑤ VERACITY – is she really ill.

⑥ RESIDENT COMPLAINTS – letter from Chief resident and others outlining deficiencies

---

→ EDUC – ① outline deficiencies
② outline course of making up deficiencies

ⓐ remind has not finished [illegible]
ⓑ remind extended absence from pgm – will need to remediate time
ⓒ ask for release of info from MD in Boston [illegible]
[illegible]

App-E40(d)

EX. 49
A

THE ARTHUR G. JAMES CANCER HOSPITAL
DIVISION OF RADIATION ONCOLOGY CALL SCHEDULE
SEPT 23, 2002 THROUGH JAN 12, 2003
FINAL CALL SCHEDULE

DATES	HOLIDAYS	RESIDENT	ATTENDING
Sept 23-29		Dr. Tippin	Dr. Nag
Sept 30-Oct 1st		Dr. Fan	Dr. Bauer
Oct 2nd – Oct 6th		Dr. Fan	Dr. Grecula
Oct 7th – 13th		Dr. Fan	Dr. Bauer
Oct 14th – 20th		Dr. Yacoub	Dr. Gahbauer
Oct 21st – 27th		Dr. Fan	Dr. Nag
Oct 28th – Nov 3rd		Dr. Liu	Dr. Grecula
Nov 4th – 11th	Veteran's Day	Dr. Tippin	Dr. Bauer
Nov 12th – 17th		Dr. Abdou	Dr. Grecula
Nov 18th – 24th		Dr. Fan	Dr. Gahbauer
Nov 25th – Dec 1st	Thanksgiving	Dr. Fan	Dr. Nag
Dec 2nd – 8th		Dr. Liu	Dr. Bauer
Dec 9th – 15th		Dr. Fan	Dr. Nag
Dec 16th – 22nd		Dr. Yacoub	Dr. Bauer
Dec 23rd – 29th	Christmas	Dr. Abdou	Dr. Gahbauer
Dec 30th – Jan 5th	New Year's	Dr. Liu	Dr. Grecula
Jan 6th – 12th,		Dr. Yacoub	Dr. Gahbauer

RADIATION ONCOLOGY BEEPER NUMBERS

Dr. Bauer	730-6572		
Dr. Gahbauer	730-6603	Dr. Abdou	730-7688
Dr. Grecula	730-6575	Dr. Fan	730-6156
Dr. Nag	730-6604	Dr. Liu	346-5216
Tim Nelson	730-6989	Dr. Tippin	346-5276
Dr. Yacoub	730-6876		
Physics	730-6980	Nina Samsami	730-6985
Nilendu Gupta	730-6983	**RT Tech**	730-6981
Brachytx Tech	730-6982	Brent Albertson	730-6984

App-E40(e)

Resident Work Limitations in Effect

E40

Theresa C. McLoud, M.D.
Massachusetts General Hospital

Susan D. Wall, M.D.
University of California, San Franciso

As of July 1, all accredited medical teaching institutions must comply with resident training rules imposed by the Accreditation Council for Graduate Medical Education (ACGME). The rules, designed to reduce resident fatigue and protect patients, replace an assortment of regulations assigned to each of the 26 specialties.

The new requirements are:

- 80 hours per week limit, averaged over a four-week period, inclusive of all in-house call activities.
- In-house call no more often than every third night, averaged over a four-week period.
- Limit of 24 hours per shift with allowance of up to six additional hours to participate in didactic activities, transfer care of patients, conduct outpatient clinics and maintain continuity of medical and surgical care.
- No new patients may be accepted after 24 hours of continuous duty
- Minimum rest period between all daily duty periods and after in-house call that should be 10 hours.
- One full day per seven days free from all clinical, educational and administrative activities averaged over a four-week period, inclusive of all call.
- Faculty and residents/fellows must be educated to recognize the signs of fatigue.
- Policies must be adopted and applied to prevent, monitor, and counteract the potential negative effects of fatigue.

Next January, the federal government, which has been threatening to legislate the issue, will ask the ACGME for proof of compliance.

It's widely accepted that sleep deprivation affects a physician's cognitive ability, judgment speed and surgical precision. The issue has prompted considerable discussion in the medical profession and on Capitol Hill.

One state—New York—has a resident work law that results in fines for hospitals that don't comply (see sidebar). Experience in New York and other institutions already in compliance suggests that resident benefits are accompanied by increased costs to teaching hospitals, and strains on the physician-patient relationship, treatment continuity and certain aspects of resident training.

"Of course you want residents to be able to go home, and have time to spend with family or to read and study. You want them to have a life outside the hospital. But focusing on a number in terms of hours and hours between shifts may move us away from traditional training goals," says Sanjeev Bhalla, M.D., assistant professor of radiology at the Mallinckrodt Institute of Radiology in St. Louis, which has already brought its program into conformity. "The residents on night float like the idea of working two nights and getting a third night off. In order to do that, we've had to get people out earlier at night and in earlier for readouts in the morning. Nothing compares with sitting down with an attending and reading a case live."

Theresa C. McLoud, M.D., director of education in the Department of Radiology at Massachusetts General Hospital, and RSNA Board Liaison for Education, says hospitals will need to provide additional support for residents so that they can focus more on the patient: "These guidelines are good for patient care and shouldn't be difficult to implement in radiology. It's important that we protect the health of our residents and make sure they can function well. We shouldn't need federal or state legislation to do that."

While the ACGME rules govern in-house activities, they don't limit the number of times a person can be paged at home in the middle of the night to read radiographic studies via a PACS

Continued on next page

App-E40(f)

E40

The Ohio State University Medical Center

GRADUATE MEDICAL EDUCATION POLICIES AND PROCEDURES

POLICY: ***Duty Hours, Work Environment and Supervision***

Effective: **9/26/01**
Revised/approved: **9/26/05**

Purpose: To ensure that residents are recognized first and foremost as students, and that the educational goals and objectives of the residency programs are not compromised by excessive reliance on residents to fulfill institutional service obligations. To ensure that the work environment and duty hours are structured appropriately to support the multiple goals of residency education: high quality education, safe and effective patient care, and resident safety.

Guidelines: **Duty Hours**

- The educational goals of the program and learning objectives of residents must not be compromised by excessive reliance on residents to fulfill institutional service obligations. Duty hours, however, must reflect the fact that responsibilities for continuity of patient care are not to be automatically discharged at specific times.
- Resident duty hours and on-call time periods must not be excessive. The structuring of duty hours and on-call schedules must focus on the needs of the patient, continuity of care, and the educational needs of the resident. Programs must ensure that residents are provided appropriate back-up support when patient care responsibilities are especially difficult or prolonged and that patient care is not jeopardized during or following assigned periods of duty.
- It is the responsibility of the Program Director and faculty to ensure that duty hours correspond to the appropriate program requirements so that residents are not required to perform excessively difficult or prolonged duties on a regular basis.
- A distinction must be made between on-call time in the hospital and on-call availability at home *vis-à-vis* actual hours worked. The ratio of hours worked to on-call time may vary with each rotation, and therefore precludes a mandated pattern of established hours.
- It is the responsibility of the Program Director to have a formal, written program policy regarding resident duty hours.

App-E40(g)

(Ex.40)

The Ohio State University
Office of Human Resources, Archer House
Columbus, OH [illegible]

Pay Group:	MCN-Salaried exempt	Advice #:	2670352
Pay Begin Date:	05/01/2002		
Pay End Date:	05/31/2002	Advice Date:	05/31/2002

Lisha Fan
6426 Egg Ct, Apt A
Dublin, OH 43017

SSN: [illegible]

Employee ID:	[illegible]
Department:	25900-Radiology
Location:	Means Hall
Job Title:	Clinical Instructor House Staf
Job Rate:	$3,470.00 Monthly

TAX DATA:	Federal	OH State
Filing Status:	Married	Married
Allowances:	3	3
Addl. Pct:		
Addl. Amt:		

	Current			YTD	
Description	Rate	Hours	Earnings	Hours	Earnings
Regular			3,470.00	672.00	17,350.00
Total:			3,470.00	672	17,350.00

Description	Current	YTD
Fed Withholding	288.55	1,042.75
Fed FICA Medicare Hospital Ins	48.36	341.71
OH Withholding	97.65	488.25
OH Columbus Withholding	69.56	347.80
Total:	436.10	2,[illegible].51

Description	Current	YTD
Parking	36.00	180.00
University Prime Care	108.24	108.24
ARP STRS/Aetna	322.71	1,613.55
Total:	466.95	1,901.79

Description	Current	YTD
Total:	0.00	0.00

Description	Current	YTD
Group Life*	8.12	40.60
*Taxable		

Current:	3,470.00	3,011.17	436.10	466.95	2,[illegible]95
YTD:	17,350.00	15,[illegible]	2,[illegible]	2,[illegible]	1[illegible]

Start Balance:	Start Balance:	Start Balance:	Start Balance:	Start Balance:
+ Earned:	+ Earned:	+ Earned:	+ Earned:	+ Earned:
- Taken:	- Taken:	- Taken:	- Taken:	- Taken:
- Over-Max:	- Over-Max:	- Over-Max:	- Over-Max:	- Over-Max:
End Balance:	End Balance:	End Balance:	End Balance:	End Balance:

MESSAGE:

THE OHIO STATE UNIVERSITY

Date: 05/31/2002

Advice No.
2670352

Deposit Amount: $2,566.95

In The
Account(s) Of

LISHA FAN
6426 Egg Ct, Apt A
Dublin, OH 43017

Location: Means Hall

Account Type	Account Number	Deposit Amount
Checking Bank Of Boston	24536426	$2,566.95
Total:		$2,566.95

NON-NEGOTIABLE

App-E40(h)

Ex. 4B

The Ohio State University
Office of Human Resources, Archer House
Columbus, OH 43210-1156

Pay Group:	MOI-Salaried Exempt	Advice #:	2783947
Pay Begin Date:	06/01/2002		
Pay End Date:	06/30/2002	Advice Date:	06/28/2002

Lisha Fan
6436 Egg Ct, Apt A
Dublin, OH 43017

Employee ID: 90085682
Department: 25000-Radiology
Location: Means Hall
Job Title: Clinical Instructor Hosp 2nd
Job Rate: $3,470.00 Monthly

TAX DATA:	Federal	OH State
Filing Status:	Married	Married
Allowances:	3	3
Addl. Pct:		
Addl. Amt:		

Description	Current Rate	Current Hours	Current Earnings	YTD Hours	YTD Earnings
Regular			3,470.00	1,033.00	20,820.00
Total:			3,470.00	1,032	20,820.00

Description	Current	YTD
Fed Withholding	208.33	1,251.30
Fed FICA Med Hospital Ins / EE	48.36	290.05
OH Withholding	97.46	585.00
OH COLUMBUS Withholding	69.36	417.36
Total:	424.10	2,544.61

Description	Current	YTD
University Prime Care	108.24	216.48
ARP STRS/ING	322.71	1,936.26
Parking	36.00	216.00
Total:	466.95	2,368.74

Description	Current	YTD
Total:	0.00	0.00

Description	Current	YTD
Group Life*	8.12	48.72
*Taxable		

Current:	3,470.00	3,011.17	424.10	466.95	2,578.95
YTD:	20,820.00	18,067.08	2,544.61	2,801.70	15,473.69

YTD Balance:	YTD Balance:	9.2	YTD Balance:	176.0

MESSAGE:

THE OHIO STATE UNIVERSITY

Date: 06/28/2002

Advice No.
2783947

Deposit Amount: $2,578.95

In The
Account(s) Of LISHA FAN
6436 Egg Ct, Apt A
Dublin, OH 43017

Location: Means Hall

Account Type	Account Number	Deposit Amount
Checking Bank Of Boston	34534434	$2,578.95
Total:		$2,578.95

NON-NEGOTIABLE

App-E40(i)

EXt B.

The Ohio State University
Office of Human Resources, Archer House
Columbus, OH [illegible]

Pay Group	[illegible]	Advice #	2745887
Pay Begin Date	07/01/2002		
Pay End Date	07/31/2002	Advice Date	07/31/2002

Lihua Fan
6426 Egg Ct. Apt A
Dublin, OH 43017

Employee ID	[illegible]
Department	25800-Radiology
Location	Means Hall
Job Title	Clinical Instructor Hosp Staff
Pay Rate	3,457.00 Monthly

TAX DATA:	Federal	OH State
Filing Status	Married	Married
Allowances	3	3
Addl. Pct.		
Addl. Amt.		

	Current			YTD	
Description	Rate	Hours	Earnings	Hours	Earnings
Regular			3,457.00	1,216.00	24,477.00
Total			3,457.00	1,216	24,477.00

Description	Current	YTD
Fed Withholding	231.07	1,482.37
Fed MED/EE	50.77	340.88
OH Withholding	106.92	690.82
OH COLUMBUS Withholding	72.12	490.65
Total	460.88	3,004.69

Description	Current	YTD
University Prime Care	128.50	345.07
ARP STRS/2002	140.10	2,276.36
Parking	36.00	252.00
Total	304.60	2,873.43

Description	Current	YTD
Total	0.00	0.00

Description	Current	YTD
Group Life*	8.00	37.00
*Taxable		

Current	3,457.00	3,161.27	460.88	304.60	2,692.23
YTD	24,477.00	21,220.29	3,004.69	3,306.39	18,165.92

YTD Balance:	YTD Balance: 19.0	YTD Balance: 176.0

MESSAGE:

Date: 07/31/2002

Advice No.
2745887

Deposit Amount: $2,692.23

In The
Account(s) Of
LIHUA FAN
6426 Egg Ct. Apt A
Dublin, OH 43017

Location: Means Hall

Account Type	Account Number	Deposit Amount
Checking	[illegible]	$2,692.23
Bank Of [illegible]		
Total:		$2,692.23

NON-NEGOTIABLE

App-E40(j)

Ex. 4a

The Ohio State University
Office of Human Resources, Archer House
Columbus, OH 43210-1156

Pay Group:	MO1-Salaried Group	Advice #:	2774174
Pay Begin Date:	08/01/2002		
Pay End Date:	08/31/2002	Advice Date:	08/30/2002

Lisha Fan
6626 Egg Ct, Apt A
Dublin, OH 43017

Employee ID:	[illegible]
Department:	25000-Radiology
Location:	Means Hall
Job Title:	Clinical Instructor House Staf
Job Rate:	$3,657.00 Monthly

TAX DATA:	Federal	OH State
Filing Status:	Married	Married
Allowances:	3	3
Addl. Pct:		
Addl. Amt:		

[illegible]

Description	Rate	Hours	Earnings	Hours	Earnings
	---- Current ----			---- YTD ----	
Regular			3,657.00	1,392.00	28,134.00
Total:			3,657.00	1,392	28,134.00

Description	Current	YTD
Fed Withholding	231.07	1,713.44
Fed FICA Med Hospital Ins / EE	50.77	391.39
OH Withholding	104.92	785.74
OH COLUMBUS Withholding	73.33	544.60
Total:	460.08	3,444.77

[illegible]

Description	Current	YTD
University Prime Care	128.50	473.66
ARP STRS/ING	140.19	2,616.46
Parking	36.00	288.00
Total:	304.69	3,378.12

Description	Current	YTD
Total:	0.00	0.00

Description	Current	YTD
Group Life*	8.96	66.66

*Taxable

[illegible]

Current:	3,657.00	3,141.27	460.08	304.69	2,892.23
YTD:	28,134.00	24,389.36	3,444.77	3,811.08	20,858.15

[illegible]

YTD Balance:		YTD Balance:	30.0	YTD Balance:	176.0

MESSAGE:

THE OHIO STATE UNIVERSITY

Date: 08/30/2002

Advice No.
2774174

eposit Amount: $2,892.23

o The
ccount(s) Of LISHA FAN
6626 Egg Ct, Apt A
Dublin, OH 43017

Location: Means Hall

[illegible]

Account Type	Account Number	Deposit Amount
Checking Bank Of Boston	24536424	$2,892.23
Total:		$2,892.23

NON-NEGOTIABLE

- -

App-E40(k)

Ex. 42

College ^ payroll 293-4902

2|2-2311

292-8446 Accounting mt.

college of medicine 292-5871
292-0760

The Ohio State University
Office of Human Resources, Archer House
Columbus, OH 43210-1156

Pay Group:	MO1-Scheduled Monthly
Pay Begin Date:	09/01/2002
Pay End Date:	09/30/2002
Advice #:	[illegible]
Advice Date:	09/30/2002

Lizhi Fan
6426 Sigg Ct. Apt A
Dublin, OH 43017

Employee ID:	[illegible]
Department:	25980-Radiology
Location:	Means Hall
Job Title:	Clinical Instructor House Staf
Job Rate:	$3,657.00 Monthly

TAX DATA:	Federal	OH State
Filing Status:	Married	Married
Allowances:	3	3
Addl. Pct:		
Addl. Amt:		

[illegible]

Description	Rate	Hours (Current)	Earnings (Current)	Hours (YTD)	Earnings (YTD)
Regular			3,657.00	1,540.00	31,791.00
Total:			3,657.00	1,540	31,791.00

Description	Current	YTD
Fed Withholding	230.54	1,943.96
Fed FICA Med Hospital Ins / SS	50.72	442.21
OH Withholding	104.75	908.40
OH COLUMBUS Withholding	73.32	687.23
Total:	459.33	3,926.10

[illegible]

Description	Current	YTD
University Prime Care	128.59	682.25
ARP STRS/ING	340.10	2,856.50
Parking	39.50	327.56
Total:	508.19	3,866.31

Description	Current	YTD
Total:	0.00	0.00

Description	Current	YTD
Group Life*	8.86	75.60
*Taxable		

[illegible]

Current:	3,657.00	3,157.77	459.33	508.19	2,689.48
YTD:	31,791.00	27,547.33	3,926.10	4,310.27	23,547.00

[illegible]

YTD Balance:		YTD Balance:	39.7	YTD Balance:	176.0

MESSAGE:

THE OHIO STATE UNIVERSITY

Date: 09/30/2002

Advice No.
[illegible]

Deposit Amount: $2,689.48

To The account(s) Of LIZHI FAN
6426 Sigg Ct. Apt A
Dublin, OH 43017

Location: Means Hall

[illegible]

Account Type	Account Number	Deposit Amount
Checking Bank Of Boston	[illegible]	$2,689.48
Total:		$2,689.48

NON-NEGOTIABLE

App-E41(a)

ISIORT
International Society of Intraoperative Radiation Therapy

c/o International Meeting Managers, Inc.
4550 Post Oak Place, Suite 342
Houston, Texas 77027
Tel. (713) 965-0566
Fax (713) 960-0488
imm@meetingmanagers.com

EX41

September 8, 2000

President
Leonard L. Gunderson, M.D., M.S.
Mayo Clinic and
Mayo Medical School
Rochester, MN

President Elect
Christopher G. Willett, M.D.
Massachusetts General Hospital
Harvard Medical School
Boston, MA

Secretary
Subir Nag, M.D.
Ohio State University Hospital
Columbus, OH

Treasurer
Francois Noel Gilly, M.D.
Centre Hospitalier Lyon-Sud
Pierre-Benite Cedex, France

Members-at-Large
Ralph R. Dobelbower, M.D.
Medical College of Ohio
Toledo, OH

Jean Pierre Gerard, M.D.
Centre Hospitalier Lyon-Sud
Pierre-Benite Cedex, France

Takeshi Todoroki, M.D.
Institute of Clinical Medicine
Tsukuba University
Ibaraki, Japan

Yuta Shibamoto, M.D.
Kyoto University
Kyoto, Japan

President Emeritus
Mitsuyuki Abe, M.D.
Hyogo Medical Center
Akashi, Japan

Past-President
Felipe A. Calvo, M.D.
Gregorio Maranon
Madrid, Spain

Lisha Fan, MD
Radiation Oncology
James Cancer Hospital and
Solove Research Institute
300 West Tenth Ave.
Columbus, OH 43210

Dear Dr. Fan:

On behalf of the ISIORT Program Committee, we are pleased to inform you that your poster entitled, ***IORT with Electron Beam or HDR for Lung Neoplasms,*** has been accepted for presentation at the Second International Conference of The Society of Intraoperative Radiation Therapy, October 26-28, 2000, at the Boston Park Plaza Hotel in Boston, Massachusetts. Your poster has been assigned **Number 13.**

Please notify Jamie Stallings at once if you are unable to display this poster. She can be reached by phone: 713-965-0566 fax: 713-960-0488 or email: jstallings@meetingmanagers.com.

Posters must fit on a poster board measuring 4' x 8'. ONLY ONE BOARD PER EXHIBIT WILL BE AVAILABLE. You may set up your poster on Wednesday, October 25 after 6:00 p.m. Posters must be ready for viewing on Thursday, October 26 at 7:00 a.m. It is requested that you supply your own velcro and/or push pins, however, additional supplies will be available. Posters must be dismantled by 6:00 p.m. on Saturday, October 28. We cannot be responsible for posters remaining after this time.

Enclosed is a Financial Disclosure form which should be completed and returned as indicated on the form. This form must be returned, regardless of whether any relationships are disclosed.

Also enclosed is a brochure with a meeting registration form and hotel registration form which need to be completed and returned to the appropriate addresses as soon as possible. Presenters are responsible for paying the appropriate registration fee.

We look forward to your contribution.

Sincerely,

Len Gunderson /pb

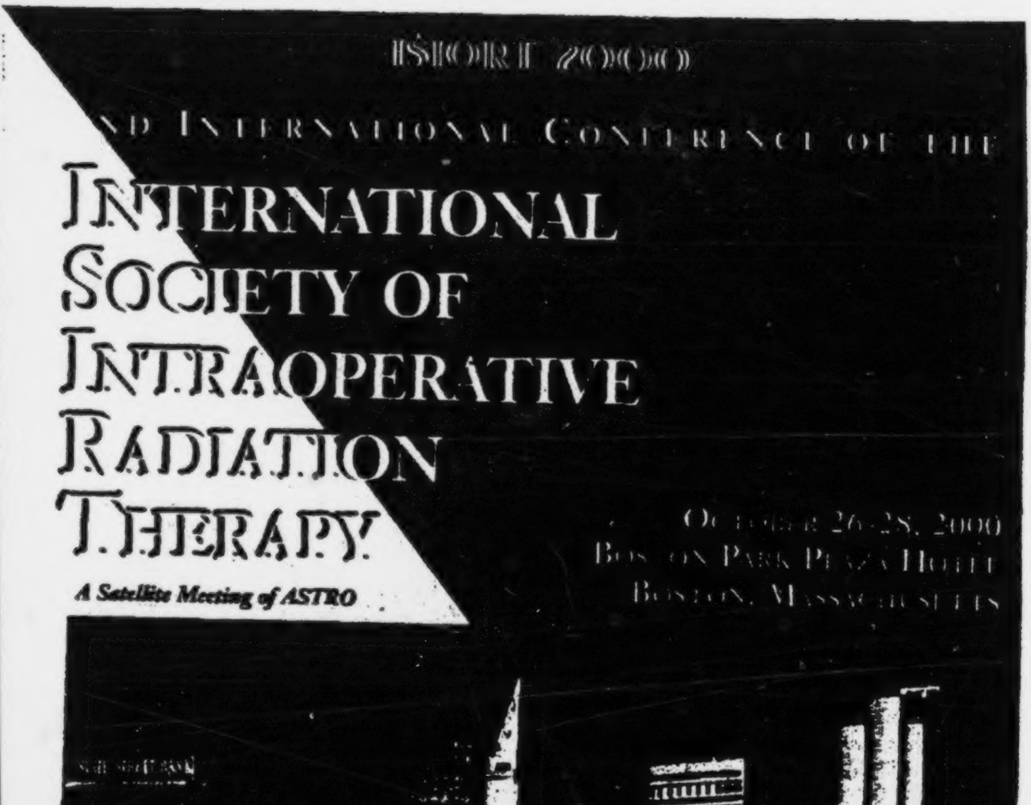
Leonard Gunderson, M.D.
President

Chris Willett

Christopher Willett, M.D.
President-Elect

Enclosures

App-E41(b)



ISIORT 2000

ND INTERNATIONAL CONFERENCE OF THE

INTERNATIONAL SOCIETY OF INTRAOPERATIVE RADIATION THERAPY

A Satellite Meeting of ASTRO

OCTOBER 26-28, 2000
BOSTON PARK PLAZA HOTEL
BOSTON, MASSACHUSETTS

OFFICIAL PROGRAM

C[illegible] FOR ABSTRACTS

Jointly Sponsored by the American College of Radiology

BAC

App-E41(c)

Intraoperative radiotherapy (IORT) for lung neoplasms

Ex.41

Lisha Fan, M.D., Subir Nag, M.D., Patrick Ross, M.D. Ph.D.
Division of Radiation Oncology & Thoracic Surgery
Arthur G. James Cancer Hospital & Research Institute
Ohio State University, Columbus, OH 43210, USA

Purpose: Thoracic control in lung cancer is dose related, but radiosensitive organs such as the lung, spinal cord, and heart often limit the dose that can be safely delivered by external beam radiotherapy (EBRT). Intraoperative radiotherapy (IORT) by either electron beam (IOERT) or HDR brachytherapy (IOHDR) can achieve a high dose to the target volume, while sparing adjacent uninvolved or radiosensitive structures. We present our initial experience at Ohio State University with IORT for the treatment of patients with locally advanced lung neoplasms.

Methods and Materials: Between May 1993 and November 1999, 15 patients (ages ranging from 2 to 68 years) with lung neoplasms, (7 NSCLC, 5 sarcomas, 3 PNET, and 2 pulmonary blastomas), at 17 sites were treated with surgical resection, IOERT or IOHDR, and supplementary EBRT. Treatment sites included the chest wall, mediastinum. IOERT was delivered (in 10 sites) with intraoperative applicators 5-10 cm in diameter to cover the entire tumor bed, plus a 1 to 2 cm margin with 6-12 MeV electrons. Uninvolved radiosensitive structures (e.g., lung, heart) were displaced from the field whenever possible. IOHDR was used (in 7 sites) where the tumor beds were inaccessible to the IOERT applicators. Various presterilized applicators made of silicone, foam, or rigid delrin were available to fit the different tumor beds. Delrin applicators were used for flat surfaces, and moderately flexible silicone applicators were used on gentle sloping surfaces. Very flexible foam applicators were used for irregular or curved surfaces. Radiation doses delivered (at 90% isodose for IOERT, and at 0.5 cm depth for IOHDR) varied from 10-20 Gy, depending on the volume of residual disease and the EBRT dose. 14 patients received supplemental EBRT, with doses ranging from 12 to 45.5 Gy. One patient refused planned EBRT.

Result: The overall local control rate was 65% with a mean follow up of 21 months. The local control rate in the mediastinum, chest wall, and lung were 84%, 56% and 50%, respectively. There was no difference in the local control rate with the various histologies or with the use of IOERT vs IOHDR. The 1 and 2 year actuarial survival calculated by the Kaplan Meier Method were 60% and 40%, respectively, with an overall mean survival of 33 months. Two patients developed complications (one year actuarial complication of 15%). Both these patients had received 20 Gy IORT. One patient developed right bronchopleural fistula after 6 months and required omental flap to repair the fistula. Another patient developed esophageal stricture requiring surgical resection after 6 months. This patient died from post-operative complications.

Conclusion: Patients with lung neoplasm can be treated with IORT (IOERT or IOHDR) and supplementary EBRT to deliver a high dose to the target volume, while sparing adjacent uninvolved radiosensitive structures. Continued follow-up with larger number of patients is needed to determine if the improved local control can translate into the long-term survival.

Presented at the 2nd ISIORT meeting, Boston, October 25-28, 2000

App-E41(d)

ISIORT
International Society of Intraoperative Radiation Therapy

c/o International Meeting Managers, Inc.
4550 Post Oak Place, Suite 342
Houston, Texas 77027
Tel. (713) 965-0566
Fax (713) 960-0488
imm@meetingmanagers.com

Ex. 41

President
Leonard L. Gunderson, M.D., M.S.
Mayo Clinic and
Mayo Medical School
Rochester, MN

President Elect
Christopher G. Willett, M.D.
Massachusetts General Hospital
Harvard Medical School
Boston, MA

Secretary
Subir Nag, M.D.
Ohio State University Hospital
Columbus, OH

Treasurer
Francois Noel Gilly, M.D.
Centre Hospitalier Lyon-Sud
Pierre-Benite Cedex, France

Members-at-Large
Ralph R. Dobelbower, M.D.
Medical College of Ohio
Toledo, OH

Jean Pierre Gerard, M.D.
Centre Hospitalier Lyon-Sud
Pierre-Benite Cedex, France

Takeshi Todoroki, M.D.
Institute of Clinical Medicine
Tsukuba University
Ibaraki, Japan

Yuta Shibamoto, M.D.
Kyoto University
Kyoto, Japan

President Emeritus
Mitsuyuki Abe, M.D.
Hyogo Medical Center
kashi, Japan

Past-President
elipe A. Calvo, M.D.
regorio Maranon
adrid, Spain

DATE: **October 28, 2006**

TO: **Lisha Fan, MD**
James Cancer Hosp.
Radiation Oncology
300 West Tenth Ave.
Columbus, OH 43210

FROM: **Pam Wasiewski - Meeting Manager**

This letter is to confirm your attendance at the following conference:

Meeting Description: ISIORT 2006.
Location: Boston Park Plaza Hotel, Boston, MA
Dates: October 28, 2006 to October 28,2006

Registration Information

Name/Session	Date	Time	Attending	Fee
Lisha Fan - Resident, Fellow Late Fee				350.00

Financial:

Total Amount Due:	350.00
Amount Received:	350.00
Balance Due:	0.00

Should you have any changes to the information presented in this confirmation, or if you have any special dietary restrictions or special needs, please contact International Meeting Managers at (713) 965-0566 or jstallings@meetingmanagers.com.

App-E41(e)

EX. 41

ISIORT
International Society of Intraoperative Radiation Therapy

c/o International Meeting Managers, Inc.
4550 Post Oak Place, Suite 342
Houston, Texas 77027
Tel. (713) 965-0566
Fax (713) 960-0488
imm@meetingmanagers.com

President
Leonard L. Gunderson, M.D., M.S.
Mayo Clinic and
Mayo Medical School
Rochester, MN

President Elect
Christopher G. Willett, M.D.
Massachusetts General Hospital
Harvard Medical School
Boston, MA

Secretary
Subir Nag, M.D.
Ohio State University Hospital
Columbus, OH

Treasurer
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Pierre-Benite Cedex, France

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Ralph R. Dobelbower, M.D.
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Toledo, OH

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Pierre-Benite Cedex, France

Takeshi Todoroki, M.D.
Institute of Clinical Medicine
Tsukuba University
Ibaraki, Japan

Yuta Shibamoto, M.D.
Kyoto University
Kyoto, Japan

President Emeritus
itsuyuki Abe, M.D.
yogo Medical Center
ashi, Japan

ast-President
elipe A. Calvo, M.D.
regorio Maranon
adrid, Spain

DATE: **October 20, 2008**

TO: **Douglas Tippin, MD, PhD**
James Cancer Hospital, OSU
Radiation Oncology
300 W. 10th Ave.
Columbus, OH 43210

FROM: **Pam Waslewski - Meeting Manager**

This letter is to confirm your attendance at the following conference:

Meeting Description: ISIORT 2008
Location: Boston Park Plaza Hotel, Boston, MA
Dates: October 28, 2008 to October 28,2008

Registration Information

Name/Session	Date	Time	Attending	Fee
Douglas Tippin - Resident, Fellow Late Fee				350.00

Financial:

Total Amount Due:	350.00
Amount Received:	350.00
Balance Due:	0.00

Should you have any changes to the information presented in this confirmation, or if you have any special dietary restrictions or special needs, please contact International Meeting Managers at (713) 965-0566 or jstallings@meetingmanagers.com.

"Plaintiff-Appellant, Lisha Fan, M.D., pursuant to FRE 102. PURPOSE & CONSTRUCTION " These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined" and 28U.S.C.§ 2072 RULES OF PROCEDURE & EVIDECE;

POWER TO PRESCRIBE (a)(b)(c), 28U.S.C.§ 2074 (b) "Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by act of Congress".

"Does appellant suffered **"Neutropenia from Radiation Exposure injury"** were considering significant or not? The **Text book** and **Experts opinions give us answer.**

1. Appellant quote Oncology News International Vol. 14 Number9/ September 2005, page 28 "Studies find Ca Risk From low-level Ionizing Radiation...WASHINHTON-Two new studies have found that low doses of ionizing radiation pose some risk of cancer, No matter how small the exposure... 'The scientific research base shows that there is **no** threshold of exposure below which low levels of ionizing radiation can be demonstrated to be harmless or beneficial,' said committee chair Riehard R. Monson, M. D. ScD, associate dean for professional education and professor of epidemiology at the Harvard School of Public Health...They support current evidence on the carcinogenic potential of ionizing radiation yet provide reassurance concerning the likely impact of ionizing radiation on the global cancer burden"

2. Appellant quote from Oncology Times Volume XXVI No. 2/ January 25, 2004, page 34," Preparing for the Unthinkable: Educational Efforts help Hematologists Plan Care for Victims of Radiation Terrorism, Mass Accidental or Deliberate Exposure to Radiation...Clinical signs and

symptoms can also help to determine risk from radiation exposure, Dr. Dainiak said. For Example, both time to emesis and lymphocyte depletion kinetics are amenable to quantitative analysis with respect to dose, he said"

3. From the text book-Radiation Oncology Management Decision, chapter 6, page 53, "Low –dose systemic therapy for chronic lymphocytic leukemia, Patients receive **0.05 to 0.15Gy** 2 to 5 times per week for leukocytosis. (see appendix text book)

4. From Department of the Navy, bureau of Medicine and Surgery (peer review status: Internally Peer Reviewed "Dose rage: **25-100rad (cGy)**, Signs and Symptoms: Transient diagnostic symptoms, e.g., decreased lymphocyte count may occur within 1-4 days…". (The results showed that my lymphocyte absolute was dropping from 1.9 to 1.5 to 1.2, and granulate absolute was dropping from 5.2 to 2.8 from days of May 16th, 17th, and 20th 2002. My family physician Dr. Burgin diagnosis Radiation Exposure and Neutropenia)(Ex. 5)

Did defendant try to obtain an Expert Witness? Yes, they did, **But, that motion were terminated three days later** (see Doc. 52. District Court).Defendants have **NO** expert witness. **Did** lead shielding was provided to appellant by defendants? **No**, lead shielding was not provided, Based on the Perez's book, on the page 501 "when using radioactive sources, the operating physician,…should work behind individual lead barriers…"

On July 25, 2005, Defendant filed brief to 6th Circuit Court, on the fact sheet for title VII Appeals. Person Reporting: Wanda L. Carter "Date EEOC complaint filed: 3/5/03" **That is not true. Fact** is that On Dec.12th, 2002, faxed a letter to EEOC regarding the retaliation and discrimination, on January 8, 2003,a letter from EEOC Ms. S. Austin-Investigator Support Assistant to scheduled a Telephone Interview On January 15, 2003